

1936

Influence of the Judiciary on the Development of Public School Policies in Louisiana.

Martin Luther Riley

Louisiana State University and Agricultural & Mechanical College

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INFLUENCE OF THE JUDICIARY ON THE DEVELOPMENT
OF PUBLIC SCHOOL POLICIES
IN LOUISIANA

A DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT
OF THE REQUIREMENTS FOR THE DEGREE
OF DOCTOR OF PHILOSOPHY
IN
LOUISIANA STATE UNIVERSITY

BY
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BATON ROUGE, LOUISIANA

JUNE, 1936

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CHAPTER I

INTRODUCTION

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INTRODUCTION

THE PROBLEM

The American system of public education reflects a conviction that the people of the nation recognize the significance of an educated public. Through the adoption of the tenth amendment to the Federal Constitution education became one of the powers reserved to the states. Since the development of the first state constitutions provisions relating to public education have been reflected in the organic documents of the various states--of the 128 constitutions adopted from 1776 to 1929 there were only 13, one of which was Louisiana's first in 1812, that did not provide for public education in some form.¹ Then, the public school may be considered as a creature of the state and subject to the government thereof.²

It is only natural to expect the heterogeneity of Louisiana's population to have affected her educational attitudes. France, Germany, Spain, England, and the United States

¹John M. Matzen, State Constitutional Provisions for Education (New York, 1931), p. 1.

²Joakim F. Weltzin, The Legal Authority of the American Public School (Grand Forks, 1930), p. 1.

were the chief sources of early immigration to the state. In all those nations, except the United States, the courts are subsidiaries to the crown or the legislative bodies. In France, legislation enacted by the National Assembly is held valid by every tribunal throughout the republic.³ "In Germany, the courts are required to enforce without question the legislative will, repugnancy to the constitution offers no excuse to do otherwise."⁴ In Spain the same relation exists between the courts and the law-making bodies.⁵ According to Sir William Blackstone, in England "what the parliament doth, no authority upon earth can undo."⁶ In the United States, the courts, under the leadership of Chief Justice John Marshall, began to exercise in the early nineteenth century the authority of passing on the validity of legislative acts whether those acts were based on the constitution or on established practice.⁷ These two conflicting theories as to the relationship between the courts and the legislative bodies have affected the educational policies of the state. The acquiescent attitude of the people in accepting the educational enactments without questioning is

³Albert V. Dicey, Introduction to the Study of the Law of the Constitution (London, 1908), p. 153.

⁴William B. Bizzell, Judicial Interpretation of Political Theory (New York, 1914), p. 27.

⁵Ibid.

⁶Sir William Blackstone, Commentaries on the Laws of England (Philadelphia, 1889), I, bk. I, p. 117.

⁷William B. Bizzell, op. cit., pp. 5-46.

evidence that the European theory of judicial and legislative relationships was prominent in Louisiana during its formative period.

Those early immigrants from Europe brought not only different conceptions of government but also the parent countries' philosophy that education is a product of the Church, especially of Catholicism, which was the legalized and dominant religion of France and Spain. This theory, which was firmly established in Louisiana during its formative period, influenced the development of educational policies, particularly those concerning the establishment of public schools.

That Louisiana has developed abiding faith in public education during the past century may be indicated by the facts that for the first thirty-four years of the state's history there was only \$1,100,637.75, or an average of \$32,371.70 yearly, spent by the state for parish schools and subsidized academies,⁸ while during the school year of 1930-1931 alone the state and parishes spent \$20,902,364.00 for the maintenance of public schools⁹ and \$4,838,224.00 for the school building program,¹⁰ or a total of \$25,740,588.00 for public school purposes. The latter total had to be secured through various forms of taxation and bond issues which required the calling of many elections, the making of contracts, and many other

⁸Edwin W. Fay, The History of Education in Louisiana (Washington, 1898), p. 67.

⁹State Department of Education of Louisiana, Eighty-fourth Annual Report, for the Session 1932-33 (Baton Rouge, 1933), p. 14.

¹⁰Ibid., p. 16.

legal procedures. The spending of that amount so as to offer proper educational opportunities for 663,169 educable children¹¹ to be taught by 12,287 teachers¹² in 2,924 schools¹³ throughout the state demanded both the judicious development and the practical application of an intricate public school system.

The above comparison is but one indication of the vast enterprise that Louisiana's system of public education has become. In the functioning of that enterprise, where much capital and many people of different interests are involved, there may be expected to have arisen many questions of law and procedures about which men have differed. Research studies reveal that many of these differences, not only in Louisiana but also in other states, have been adjudicated by the courts in order to determine the law. It has been estimated that 1 case of 150 cases tried in the lower courts reaches the state supreme courts.¹⁴ In 1927 there were 231 school cases settled in the supreme courts of the various states.¹⁵ Accepting the former ratio and latter count as correct and considering Louisiana as an average state, there should have been in 1927

¹¹State Department of Education of Louisiana, Eighty-second Annual Report, for the Session 1930-31 (Baton Rouge, 1931), pp. 142-143.

¹²Ibid., p. 30.

¹³Ibid., pp. 98-101.

¹⁴Paul G. H. Jarvis, "Recent Supreme Court Decisions on Teacher Contracts," School and Society, XXIV (1926), p. 153.

¹⁵Richard B. Thiel, "An Analysis of the Nature and Frequency of Supreme Court Cases in School Law for the Calendar Year of 1927," Journal of Educational Research, XIX (1929), p. 178.

approximately 750 controversial school questions that found their way to the courts for adjudication, 5 of which should have been continued to the supreme court of the state for final disposition. By actual count, Louisiana in 1927 brought before its supreme court 7 cases involving 26 different points of law and received from its attorney general 19 opinions on public school questions.

Since the courts and the attorneys general, by means of decisions and opinions as based on organic and statutory enactments and established rights, have the responsibility of deciding what the law is, and since the law is the final authority, their interpretations may be accepted as influential in the shaping of public school policies. The study herein presented is an attempt to discover the law governing the free public school system of Louisiana and to designate those basic policies which were dominant in the development of that system.

This study presents for the first time Louisiana's interpretation of her educational law. It is submitted with the anticipation that it may prove a contribution to those educators in general and school administrators in particular who may attempt to solve the present and future problems of the state's public school system.

LIMITATIONS OF STUDY

To indicate how broad or how limited may be a problem which deals with the legal bases of public school policies a few related studies are cited. Otto T. Hamilton, in 1927,

attempted to discover the law governing the curriculum of the American public school as revealed by the facts of cases and the decisions of judges in the higher courts of all the states of the Union.¹⁶ A study completed by Fred H. Barber in 1928 was an attempt to determine the educational policies of Tennessee as revealed by the state's constitutional provisions and the decisions of its supreme court.¹⁷ In 1932 Jennings B. George presented a study purporting to show the development of public school policies in Mississippi as revealed by judicial interpretations of the state's constitutions and statutory laws.¹⁸ In the same year Carl G. Leech published the results of an investigation which sought to ascertain the constitutional and legal provisions for the establishment of public education in New Jersey, in as much as such principles are implied in the state's constitutions, statutory laws, and court decisions.¹⁹ Thus, it may be seen that in related problems the limitations have ranged from one phase of education in all states to all phases in one state, some having for their legal bases judicial interpretations of the law, some including constitutional influences, and others adding statutory enactments and opinions from the states' legal counselors.

¹⁶Otto T. Hamilton, The Courts and the Curriculum (New York, 1927).

¹⁷Fred H. Barber, The Constitutional and Legal Basis of Public-School Administration in Tennessee (Chicago, 1928).

¹⁸Jennings B. George, The Influence of Court Decisions in Shaping School Policies in Mississippi (Nashville, 1932).

¹⁹Carl G. Leech, The Constitutional and Legal Basis of Education in New Jersey (Philadelphia, 1932).

This study of the public school policies of Louisiana confines itself to the interpretations of the state's organic and statutory laws as rendered primarily by her supreme court. In the absence of decisions by the supreme court, rulings by the state court of appeal and by the attorneys general have been used. Also, in the few cases where the state supreme court decisions were not final the interpretations by the United States Court were obtained.

PROCEDURE

In the preparation for this research study, approximately a year was spent in an intensive survey of the material in any way related to the development of education in the state. One product of this general investigation was a problem showing the developments of education in Louisiana prior to statehood.²⁰ A résumé of this problem appears as the historical foundation for the present study.

Work on this study proper began with a systematic collection of all proceedings indicating the development of educational policies in the state's organic law as found in the Official Debates and Journals of the nine Louisiana constitutional conventions. This information was taken in typewritten form and filed.

²⁰Martin L. Riley, The Development of Education in Louisiana Prior to Statehood (unpublished MS., Louisiana State University, Baton Rouge, Louisiana, 1936).

By a search of the various digests there was compiled a bibliography of cases pertaining to public education in Louisiana. To facilitate the work of analysis, the principal cases--those listed in the digests under the topics, "Public Education" and "Schools and School Districts"--were typewritten. Supplementary cases were located by examination of the cases listed under the cross-references in the digests, those referred to in the cases previously collected, and those listed under the various principal cases in Shepard's Louisiana Citations through the December, 1934, Supplement. This system was continued with the supplementary cases until the cases referred to were in no way connected with the public schools. Some of the cases thus located were typewritten while others less related to schools were briefed.

Next there were listed from all the reports of the attorneys general the opinions concerning public education. These opinions, which were in the form of letters written to individuals in answer to questions on educational law, were typewritten and filed as separate notes.

A search was then made for previous studies bearing on the subject. Notes and citations therefrom were collected and added to the files.

In the work of analysis, cases or briefs were carefully read, a name was assigned to each, and a first grouping of the cases was made; this led to the eight major divisions of the study.

Each case or brief was then reread and all major and minor points therein were listed. These phases were classified

according to the major divisions and organized within the subdivisions which they established.

Opinions of the attorneys general were next classified according to the divisions and subdivisions set up by the supreme court decisions, additional subdivisions being made when necessary.

The material on each major topic from all sources--constitutional conventions, supreme court decisions, opinions of the attorneys general, and any other source whatever--was organized and presented as a chapter of the study.

Liberal use has been made of clear and concise quotations, but in a limited study of this nature there was not space to permit their use on all issues found in the constitutions, statutory laws, court decisions, or attorney generals' opinions; however, enough have been presented to enable the reader to interpret for himself some of the pertinent underlying policies involved in the law governing Louisiana's system of public schools.

Each chapter which presents one of the eight major divisions is concluded with a summary of the issues and trends that seem to indicate the development of educational policies according to the data confined therein. The last chapter attempts to reveal the law governing the free public school system of Louisiana by pointing out in the study as a whole those salient issues and trends which have appeared fundamental in shaping the educational policies of the state.

The chapters, determined mainly by the classification of the supreme court decisions into topics, as explained, and

composed of all data similarly classified, are presented under the following titles:

- I. Introduction.
- II. Prestate Foundations of Public School Policies.
- III. Public Education as a State Function.
- IV. Public School Support through Land Grants.
- V. Public School Support through General Funds.
- VI. Public School Support through Special Funds.
- VII. Educational Control by Nonprofessional Agencies.
- VIII. Educational Control by Professional Agencies.
- IX. School Districts and Property.
- X. Administration of Pupil Personnel and the Curriculum.
- XI. Conclusions.

CHAPTER II

PRESTATE FOUNDATIONS OF PUBLIC SCHOOL POLICIES

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PRESTATE FOUNDATIONS OF PUBLIC SCHOOL POLICIES

In the study of educational policies of the state of Louisiana it is significant to note that many of the existing theories of today antedate the period of statehood. From the beginning there seems to have been felt the need for a power higher than the administrative officials of the educational institution themselves to settle controversial issues, whether that power was the crown of France or Spain or the territorial legislature under the United States. Likewise, at an early date those interested in education found themselves incapable at times of interpreting satisfactorily the standards set up and contracts entered into; consequently, the Superior Council and the Cabildo--the judicial bodies of the French and Spanish periods, respectively--and the governing authorities of the territorial period rendered frequent interpretation of the then existent educational practices. Those theories, decisions, and interpretations, forerunners of the work of the supreme court of today with respect to education, have a natural presentation according to the various governmental periods which the territory of Louisiana had before the state came into existence in 1812.

BEGINNINGS UNDER THE FRENCH DOMINION

From the time of the first French settlement on the Gulf Coast in 1699 to the transfer of this territory to Spain by the Treaty of Fontainebleau in 1762 the French Government prescribed and enforced the controlling policies of her Louisiana colony. The Church, which dominated educational thinking in the mother country, was similarly influential in the new province--that is, the religious organizations assumed responsibility for the training of the youth.¹

During this period many families of wealth sent their sons to the mother country for college training, but the education of the girls and of those boys who were unable to attend college in France presented a serious problem.²

The school of this period which demanded most attention from the French crown, through its immediate governing body--the Company of the Indies, was the petit collège established at New Orleans by Father Raphael, the Capuchin Superior. In a letter written, September 15, 1725, to the Abbé Raguet, Ecclesiastical Director of the Company, Father Raphael stated that a director and an assistant had been employed--the one to instruct advanced pupils, the other to teach beginners.³

¹Biographical and Historical Memoirs of Louisiana (Chicago, 1892), I, p. 102.

²Ibid.

³Dunbar Rowland, and Albert G. Sanders, Mississippi Provincial Archives, 1701-1729, French Dominion (Jackson, 1929), II, pp. 505-509.

The founder of this school advocated the theory of state support and state-controlled curriculum--or the equivalent thereof--when he recommended that no fees be charged for admission and that the Company furnish for the new undertaking an ample supply of catechisms, primers, elementary books, grammars, and other material for advanced work.⁴ Anticipating the Company's interest in this undertaking, Raphael conferred with Sieurs de Lery and de la Frénière, outstanding men of the colony. The three agreed to purchase conjointly a small house from Monsieur Langloy at the price of three thousand livres to accommodate the pupils,⁵ about fifteen in number, who were in the colony and eligible to enter.⁶ The presence of a struggle to determine which theory of support--private or public--should dominate is evidenced by Father Raphael's statement to Abbé Raguet, May 18, 1726, as follows:

"I am only embarrassed about the payment of the house where school is conducted. Those who promised me to advance money for it, seem to disown their word, fearing lest they should not be reimbursed and not wishing to make outlays in favor of the public. I beg you, Sir, to honor me with your protection in this matter, for if I should be forced to abandon the house, this institution, so necessary and useful, will be surely ruined."⁷

⁴Ibid, p. 514.

⁵Claude L. Vogel, The Capuchins in French Louisiana (1722-1766) (New York, 1928), pp. 70-71.

⁶Dunbar Rowland, and Albert G. Sanders, op. cit., p. 508.

⁷Claude L. Vogel, op. cit., p. 71.

In reply, Father Raphael was advised to discuss the problem with Governor Périer and Monsieur de la Chaise of New Orleans with a view of interesting local authorities in paying for the building or of compelling the defaulters to fulfill their promise and, if necessary, of asking the Company to assume the obligation.⁸

By 1727 an interpretation of the Company's contract with respect to schools was sought from the Superior Council by Monsieur Langloy, when he brought before that body a suit to compel Father Raphael to pay the three thousand livres as a past due obligation. The hesitation of the Council itself to interpret in favor of public support is revealed by the various reversals of decisions. The developments of the case, as given in a research study of the Capuchins,⁹ were the following. In the first hearing, October 27, 1727, the Council held that Father Raphael was acting only as an agent for the Company, which by virtue of its contract was to provide churches, schools, and other religious establishments in the colony, and that therefore Raphael was exonerated from the obligation. In July, 1730, the case was reopened and that time Father Raphael was ordered to pay Langloy the sum of three thousand livres for the house he was using for a school. Again, April, 1731, Father Raphael presented his plea of defense, explaining that, since he was acting in the capacity of an agent for the Company, the duty of paying for

⁸Ibid.

⁹Ibid., pp. 71-74.

the schoolhouse devolved not on him but directly on the Company or indirectly on the inhabitants of the colony. Three months later the case was still pending and apparently against Father Raphael, for in July, 1731, he addressed Monsieurs Brusle and Bru of the Superior Council, reiterating his reasons for not being held personally responsible for the pending debt and reading from a letter received from the Company of the Indies in 1727 excerpts concerning the school as follows:

"The establishment of the school concerns the inhabitants only, since it is for the education of their children, it is just that they contribute to the payment of the house they have chosen for the school. The Company is willing to enter for one fourth, considering it not proper that establishments be made without its having a share therein."¹⁰

The two gentlemen promised to take the matter up again with the Council for a final settlement, and since neither the court record nor Father Raphael refers to the matter again, it is assumed that the Company ultimately agreed to liquidate the obligation. And so, it seems that finally the theory of public support, through the Company, was upheld by the Council and agreed upon by those in controversy.

The assumption of education as a responsibility of the colony was earnestly sought by Governor Jean Baptiste le Moyne de Bienville, who felt "that the prosperity and even the existence of the Colony depended, in a great measure, in establishing educational institutions for the young."¹¹

¹⁰Ibid., p. 73.

¹¹Mary Teresa Austin Carroll, The Ursulines in Louisiana, 1727-1824 (New Orleans, 1886), p. 5.

Through his influence and the work of Father de Beaubois, the Jesuit Superior, the Ursulines of Rouen were contracted with to send nuns to the colony to care for the sick and to educate the girls especially. The Company's recognition of the importance of education is stated in the Preamble of the Treaty with the Ursulines as follows:

The Company having considered that the most solid foundations of the Colony of Louisiana are the establishments which tend to the advancement of the Glory of God, . . . and wishing again, by a new establishment equally pious, to relieve the poor sick and provide at the same time for the education of young girls, has agreed to and accepted the offers which have been made to it by Sisters Marie Tranchepain . . .¹²

By way of support, the "Company agreed to maintain six nuns including the Superior; to pay their passage and that of four servants to serve them during their voyage; and moreover to pay the passage of those who, from whatever motive, would wish to return to France."¹³ Another indication of support by the government is found in a letter written by Governor Périer to the Company of the Indies, November 3, 1728, in which it was stated: "As for the orphan girls, we put them with the nuns for the sum of one hundred and fifty livres that we pay them per year for each of them, . . . When the

¹²Henry Renshaw, "The Louisiana Ursulines," Louisiana Historical Society Publications, II (December, 1901), p. 37. Translation from "Traité de la Compagnie des Indes avec les Ursulines," which is included in the article.

¹³Heloise H. Cruzat, "The Ursulines of Louisiana," Louisiana Historical Quarterly, II (1919), p. 9. Explanation in footnote: "Taken from 'Relation des premières Ursulines a la Nouvelle Orleans et de leur etablissement en cette ville par la reverende Mere de Tranchepain, Superieure.'"

hospital is built we shall put the boys in it also whom we shall be able to place as apprentices at a certain age with workmen for their time."¹⁴ As a further step, the colony in 1740 budgeted twelve thousand livres for the support of the twelve nuns and their orphans.¹⁵ Partial control by the Company, to recompense for partial support, was assured when "it was agreed that one of the nuns would be overseer of the hospital, that she would supervise all temporal needs, and would render account once a month to Messrs. the Officers; . . . that there would be one for the school for the poor, . . ."¹⁶ In the contract the Company agreed that the nuns could take girl boarders when it did not interfere with their stated obligations,¹⁷ and in approving the treaty the King of France promised the Religious his protection and safeguard.¹⁸ In July of 1737 the Ursulines had occasion to request the Superior Council to interpret those agreements when they sued to collect from the estate of M. St. Julien the sum of four hundred forty-nine livres and ten sols for the board of a mulatress which the said St. Julien had placed

¹⁴Dunbar Rowland, and Albert G. Sanders, op. cit., pp. 591, 601-602.

¹⁵Mary Teresa Austin Carroll, op. cit., p. 18.

¹⁶Heloise H. Cruzat, loc. cit.

¹⁷Ibid.

¹⁸Reverend Henry C. Semple (ed.), The Ursulines in New Orleans and Our Lady of Prompt Succor: A Record of Two Centuries, 1727-1925 (New York, 1925), pp. 174-178.

in their care. The attorney for the vacant estate demanded the return of the mulatress, whereupon the nuns presented their bill before releasing the girl. The claim was sustained, the debt was ordered paid, and the mulatress was released from the Convent.¹⁹ Those instances are sufficient to show that with the Ursuline educators there was beginning to be put into practice the theory of public support and control.

The establishment of a government school had long been earnestly sought by Bienville, and in a communication addressed to the French government, June 15, 1742, he gave proof that there existed an educational consciousness for a higher institution of learning in the colony. However, this memorial was disregarded by the French government because it felt that a colony of about thirty-five hundred inhabitants spread over such an immense territory was not ready for that type of institution.²⁰

With regard to private schools and apprenticeships, two of the educational institutions giving the most returns during the French period, the Company assumed no responsibility of support or control, but through its Superior Council assured those institutions their just rights and protection. One such case dealt with the breaking of a contract between Madame Hoffman and Sieur Dupare. Madame Hoffman apprenticed

¹⁹Records of the Superior Council of Louisiana (MS., Archives of the Louisiana Historical Society, Cabildo, New Orleans), No. 2110, July 29, 1737, pp. 8577-8579.

²⁰Charles Gayarré, History of Louisiana (New Orleans, 1903) I, pp. 521-522.

a young slave to Sieur Dupare for a stipulated period of time. The trade master agreed to teach the boy a trade, and also, reading and writing. Madame Hoffman sued Dupare for a return of the boy before the end of the stipulated time because of non-fulfillment of the contract.²¹

Thus, when the whole of the almost three-fourths century of French rule in the Louisiana territory is considered there is evidence of the beginnings of partial support and control of educational institutions by the public, attempts to promote the theory of the right and duty of the public to establish educational institutions, and the function of a judicial body as an interpreter for education.

DEVELOPMENTS DURING THE SPANISH RÉGIME

Soon after the passing of Louisiana to Spanish control in 1762 there seems to have been initiated by the government of the mother country a very definite move to establish, support, and control a system of schools. The King's resolves, as stated in a letter from the Minister of the Indies to Governor Don Luis de Unzaga y Amezaga, July 17, 1771, were: "to establish schools in the Province of Louisiana in order that the Christian doctrine, elementary education, and grammar may be taught, . . ."²² Definite and detailed

²¹Records of the Superior Council of Louisiana, August 9, 1741.

²²David K. Bjork (ed. and trans.), "Documents Relating to the Establishment of Schools in Louisiana, 1771," Mississippi Valley Historical Review, XI (1924-1925), p. 562.

provisions for control by the government were contained in the contract, as is illustrated by the tenth section, which read:

I, Don Manuel Andres Lopez de Armesto, as Director, to whom the other three are to be subordinate, shall prescribe for them the method and rules for literary exercises and piety; shall watch over the progress of the pupils, conduct of the teachers, and supply their vacancies in case of sickness or any other unforeseen accident so that the movement may maintain the good order of this great important work; and my salary and remuneration shall be a thousand pesos yearly paid the same as each one of the others mentioned above.²³

Not only did the Spanish government thus introduce the practice of establishing public schools but also it provided definitely for curriculum control by specifying the subjects to be taught, emphasizing the teaching and spread of the Spanish language, and sending a supply of books for the beginning of a library and other books to be sold to the pupils at cost.²⁴ In this undertaking there was no trace of compulsory education--rather, Governor Unzaga guarded against any attempts at forcing parents to patronize the government schools; he sought attendance through presenting the educational facilities as a great opportunity made possible by the government.

A further step in control--that is, supervision by the Spanish educational director of the colony--was taken in 1800 by the Governor when in granting a license to Don Luis Francisco Le Fort of France he stated:

²³Ibid., p. 565.

²⁴Ibid., pp. 561-569.

The license for which he has petitioned has been conceded to him in order to start a public school, in this city, with the object to teach the Latin, English and French languages, and the parts of Mathematics and the rest which he stipulates in his memorial, for the utility and benefit that can result to the public as the Señor Director explains in his information, to whom it is entrusted to watch over its fulfillment as also that a Christian and polite education be given to the pupils, as is suitable to them.²⁵

Public support of the schools established under the French rule was continued by the Spanish crown, especially those directed by the Ursulines. A pension was granted the convent "for the support of two of the nuns, probably those who taught the free school."²⁶ Governor Don Estevan Miro's report of 1785 listed seven hundred twenty dollars for the support of six nuns and three hundred sixty dollars for the care of twelve orphan girls.²⁷

To the various existing types of educational institutions the government, through its judicial body, the Cabildo, gave protection and interpretation in controversies arising from time to time. Illustrating this form of service, the attorney for the Ursulines forced collection and resumption of payment to the convent of a yearly pension which had defaulted for twelve years.²⁸ Another case concerned a private

²⁵Henry P. Dart, "Public Education in New Orleans in 1800," Louisiana Historical Quarterly, XI (1928), p. 246.

²⁶Mother Mary Austin Carroll, "Education in Louisiana in French Colonial Days," Essays, Educational and Historic (New York, 1899), p. 47.

²⁷François-Xavier Martin, The History of Louisiana (New Orleans, 1882), p. 242.

²⁸Spanish Judicial Records of Louisiana (MS., Archives of the Louisiana Historical Society, Cabildo, New Orleans), No. 10711, June 18, 1770, pp. 96994-96997.

tutor. In 1779 Pedro Flouard filed suit against Francisco Ense to collect forty-two pesos and four reales for service rendered in teaching his children to read and write. In refusing to pay, Ense testified before the Court that Flouard failed to remain in his home a full year, a requirement stipulated in the contract; the teacher's reply was that he could not remain because he was not properly fed. The plaintiff's petition praying that his bill be ordered paid was granted.²⁹ Also, as a means of protection to both the master and the youth who was to be trained, apprenticeship contracts were placed on record with the judicial body.

✓From the foregoing educational activities during Spanish rule in the territory, it seems that the foundation for the establishment of schools by the public was laid, that support by the public was increased, that governmental control extended itself to include the setting-up of the curriculum, the naming of books to be used, and supervision, and that the governing body continued to interpret contracts and administer justice to those in controversy concerning teaching and learning.

EDUCATIONAL PROGRESS WHILE A TERRITORY OF THE UNITED STATES

When Louisiana became a territory of the United States in 1803 its most serviceable educational institutions

²⁹Ibid., No. 3599, May 14, 1779.

which had survived from the Spanish régime were the Ursuline Convent, private schools, tutors, and academies. To the first of those, in particular, the United States promised protection without interference from civil authority.³⁰ The schools established, supported, and controlled by the Spanish government seem to have met with little permanent success.³¹ In fact, as a result of the efforts of all types of educational institutions, not more than half of the inhabitants, as shown by a survey made in 1803, were supposed to be able to read and write, of whom not more than two hundred, perhaps, were able to read and write legibly.³²

The progress of education during the eight years of territorial government by the United States consisted, not mainly in the establishment and support of schools, or in the development of policies by judicial interpretation, but in the promulgation of educational theories by the inhabitants themselves through their representative bodies. During the period it was not variances of opinion which demanded settlement by a court that were of significance--rather, the significant struggle was within the territorial legislature itself where educational policies, many of which were to carry over to the state, were being formulated as a product of the composite attitudes of the people of the territory.

³⁰Reverend Henry C. Semple, op. cit., pp. 59-61.

³¹Dunbar Rowland (ed.), Official Letter Books of W. C. C. Claiborne, 1801-1816 (Madison, 1917), I, pp. 326-327.

³²American State Papers: Documents, Legislative and Executive, of the Congress of the United States, Miscellaneous (Washington, 1834), I, p. 353.

To Governor William C. C. Claiborne, as is revealed by his various messages and activities, is due much of the credit of promoting the cause of public education. He stressed continuously to the people, especially the territorial assemblies, the significance of establishing a system of free public schools under the direction of the government. The various legislative responses show the gradual development of an educational consciousness which led to the acceptance of the theory that education is a state function. The first step, the passage of "An Act to institute an University in the territory of Orleans," approved April 19, 1805,³³ provided for the establishment and the control, through a board of regents, of a college at New Orleans and a number of academies throughout the territory--in substance, it authorized an elaborate state system of institutions of secondary and college rank. The curriculum, the district, and pupil personnel were incorporated in this first act, for the board was authorized to establish "within each county of this territory, one or more academies for the instruction of youth, in the French and English languages, reading, writing, grammar, arithmetic, and geography"³⁴ and "such a number of academies in this territory as they may judge fit, for the instruction of the youth of the female sex in the English and French languages, and in such branches of polite literature and such liberal arts and accomplishments as may be

³³Acts Passed at the First Session of the Legislative Council of the Territory of Orleans, 1804, "An Act to institute an University in the territory of Orleans," ch. xxx.

³⁴Ibid., sec. 4.

suitable to the age and sex of the pupils.³⁵

Concerning the policy of support, without which there could have been no permanence to establishment or control, there was much struggling. The act of 1805, which placed establishment and control in the hands of the public, through its agent, provided that the system be supported by lotteries.³⁶ This, however, did not prove satisfactory, and so in 1807 the particular section was repealed, but there was no provision for other means of support.³⁷

As yet the system of public education established had not provided for that which the masses needed most--namely, elementary education. In 1806 the legislature authorized the establishment of elementary schools in the various counties,³⁸ but not until 1808 did it provide the means of establishment, which was a parish school board whose duty was to determine the mode, place, and amount of tuition money for the education of youth, in the manner which to them should appear most convenient.³⁹ As may be seen, this act

³⁵Ibid., sec. 5.

³⁶Ibid., sec. 8.

³⁷Acts Passed at the Second Session of the First Legislature of the Territory of Orleans, 1807, "An Act to repeal the eighth section of the Act of the Legislative Council, entitled, 'An Act to establish an University within the territory of Orleans, and for other purposes,'" ch. vii.

³⁸Acts Passed at the First Session of the First Legislature of the Territory of Orleans, 1806, "An Act to provide for the establishment of public free schools in the several counties of the Territory," ch. iv.

³⁹Acts Passed at the First Session of the Second Legislature of the Territory of Orleans, 1808, "An Act to provide for the means of establishing public schools in the parishes of this Territory," ch. vii.

made no provision for public support by the Territory, support having been cared for in the control phase. Even that provision for support was weakened in 1809 when there was passed an act permitting individuals to decide for themselves whether or not they wished to pay the tuition fee set up by the parish school board.⁴⁰

So uncertain seemed definite provision by the people of the Orleans Territory for adequate support of public schools that Governor Claiborne besought Congress to provide some form of financial aid which would enable the Territory to establish seminaries of learning in the various counties.⁴¹

Finally, in 1811, the legislature accepted the responsibility of financing a program of public education by providing for the College of New Orleans an initial and an annual appropriation. To each of the twelve counties there was an appropriation for the establishment and maintenance of one or more schools therein. Control was further strengthened by the placing of the execution of the law in the power of the regents of the University in cooperation with a board of administration for each county.⁴²

⁴⁰Acts Passed at the Second Session of the Second Legislature of the Territory of Orleans, 1809, "An Act to explain the Act entitled, 'An Act to provide for the means of establishing public schools in the parishes of this Territory,'" ch. xx.

⁴¹Charles Gayarré, op. cit., IV, pp. 224-225.

⁴²Acts Passed at the Second Session of the Third Legislature of the Territory of Orleans, 1811, "An Act supplementary to an act entitled, 'An Act to institute an University in the territory of Orleans,'" ch. xviii.

Thus, it is seen that the Territory of Orleans, through its body politic, was possessed with an educational consciousness which led it to provide early for the establishment and control of a system of public education, but which permitted it to shift and evade the burden of support until 1811, when that obligation was acknowledged by the legislature in an act appropriating money to aid in the construction and maintenance of public educational institutions.

From the foregoing brief survey of the early development of the law concerning public education through regal orders, interpretation by judicial bodies, and legislative enactment, it may be concluded that in Louisiana prior to statehood there were laid the foundations for the power of the state to establish, to support, and to control a system of free public schools, and there was established some law concerning school districts, the teaching and learning personnel, and the organization and administration of the curriculum.

CHAPTER III

PUBLIC EDUCATION AS A STATE FUNCTION

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Louisiana's policies of education inherited from her territorial periods were primarily products of the Church or private institutions, with a specific trend toward governmental interest in the development of secularized education. Governor William C. C. Claiborne, who served as the highest official during both the territorial and early state periods, was an ardent advocate of the theory that, since an educated public contributes to the general welfare of a republic, the state should provide educational facilities for its youth.

The assumption is made that education in Louisiana has been accepted as a state function. The purpose of the present chapter is to determine whether the educational policies as based upon the provisions of the organic law and established by judicial interpretations have revealed that Louisiana's theory of education allocates it as a responsibility of the state.

LEGAL IMPLICATIONS

Education as a Reserved Power of the State

The theory of public education as a function of the state was legally recognized by the Articles of Confederation

two years prior to the adoption of the Federal Constitution. This implication was embodied in the Ordinance of 1787, which was the first law providing for a territorial form of government. Article III of that compact declared that: "Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." This portion of the document has proved a potential factor in influencing the development of legal bases for public schools in the various states of the Union.¹

The presence of an educational consciousness when the National Constitution was being formed is evidenced by the discussions of leaders, such as Charles C. Pinckney, James Madison, and Gouverneur Morris, relative to the possibility of giving Congress educational powers, if such powers were expedient or necessary.²

Since there is no direct mention of education in the Federal Constitution, one may reasonably ask by what right the state assumes the responsibility of public education.

Through the adoption of the Tenth Amendment to the Federal Constitution in 1791, provisions were made whereby: "The powers not delegated to the United States by the Constitution,

¹Joakim F. Weltzin, The Legal Authority of the American Public School (Grand Forks, 1930), p. 31.

²Report of the Commissioner of Education for the Year 1892-93 (Washington, 1895), II, pp. 1293-1295.

nor prohibited by it to the States, are reserved to the States respectively, or to the people." In interpreting this amendment Chief Justice Morrison R. Waite said, "The Government of the United States is one of delegated powers alone. Its authority is defined and limited by the Constitution. All powers not granted to it by that instrument are reserved to the States or the people."³ Since education was not one of the delegated powers, it became one of the powers reserved to the states⁴ solely as a function of the government.⁵ The underlying theory accepted by legal opinion is that: "'Education belongs to the state. It is no part of the local self-government, inherent in the township or municipality except so far as the Legislature may choose to make it such.'"⁶ Therefore, the establishment, support, and control of schools passed "to the people of the different states to handle, or to neglect, in any manner which they saw fit."⁷

Early Statehood Provisions

When it is considered that Governor Claiborne, a staunch advocate of education, and the Honorable Julien

³ United States, Plff. in Err., v. William J. Cruikshank et al., (1876) 92 U. S. 551.

⁴ Harvey C. Voorhees, The Law of the Public School System of the United States (Boston, 1916), p. 3.

⁵ Fred Engelhardt, Public School Organization and Administration (Boston, 1931), p. 565.

⁶ Hermann H. Schroeder, Legal Opinion on the Public School as a State Institution (Bloomington, 1928), p. 30.

⁷ Ellwood P. Cubberley, State School Administration (Boston, 1927), p. 10.

Poydras, an educational philanthropist, were dominant personalities in the Constitutional Convention of 1812, it is difficult to explain why public education received no mention in the state's first organic law. A partial explanation may be attributed to the fact that:

. . . the need for free schools had not as yet been brought home to the Convention members who were all men of means, representatives of that class who were able to employ private tutors for their children or patronize private schools of which there were quite a number besides those taught by the nuns and members of the priesthood. Many of the wealthy parents sent their sons to schools in France or to those in northern cities such as Philadelphia or Baltimore.⁸

This silent attitude manifested by the delegates of Louisiana's first constitutional convention in providing for a system of free public schools is reflected by similar assemblies throughout the Nation--of the 23 states that formed the Union in 1820 only 13 made any organic provisions for public education,⁹ and in 1916 New York's Constitution was still silent on this subject.¹⁰

Notwithstanding the lack of constitutional provisions for education, the legislature proceeded to create machinery for the purpose of establishing public schools throughout the state.¹¹ These provisions were expanded by

⁸Henry E. Chambers, A History of Louisiana (Chicago, 1925), I, p. 565.

⁹Ellwood P. Cubberley, Public Education in the United States (Boston, 1934), p. 94.

¹⁰Harvey C. Voorhees, op. cit., pp. 5-6.

¹¹Acts of Louisiana: 1819, "An Act to amend the several laws enacted on the subject of Public Schools within this State, and for other purposes," pp. 52-54; 1820-21, "An Act to extend and improve the system of Public Education in the State of Louisiana," pp. 62-68.

the acts of 1827¹² and 1833.¹³ Thus, statutory law alone furnished the legal bases of public education in Louisiana until its Constitution of 1845.

Organic Policies

An interest in free public schools was reflected in a constitutional convention in Louisiana for the first time on August 12, 1844. At that date a committee on education was appointed to make a survey of the educational status of the state and to "report whether any, and if any, what provisions ought to be made by the constitution upon the subject of education and the promotion and encouragement of literature."¹⁴ Approximately six months later this committee submitted its recommendations to the Convention. Chairman G. Mayo's lengthy report indicated that the committee assumed education to be a function of the state, as may be seen by the following:

As it is through the medium of education that the intellectual faculties of man are cultivated, and his physical and mental powers regulated and perfected, the subject would appear to justify as much attention and care as any other that can engage the attention of the legislator.

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The necessary steps ought first to be taken to place within the reach of the mass of the children

¹² Acts of Louisiana, 1827, "An Act to provide for the support and administration of parish schools and for other purposes," pp. 80-88.

¹³ Acts of Louisiana, 1833, "An Act supplementary to the several acts relative to Public Education," pp. 141-144.

¹⁴ Official Report of Debates in the Louisiana Convention, 1844-45, p. 25.

throughout the State, such an education as will fit them for the higher branches, and in such a manner as to place all on an equal footing in the enjoyment of the benefits to be derived from the funds of the State. This would create a laudable ambition between those whose progress and advancement would fit them for the higher schools; and thus the higher as well as the lower would be supported. The progress of the child in the acquisition of a substantial education, would emulate the parent; parents would encourage each other; and when the spirit of education, could be fairly put into operation, it is believed that it would here, as it has done in many of the States of the United States, and in Prussia and Germany, carry with it public opinion, which in this country is all that is necessary to sustain any measure that promises to be permanently useful.

Any system that may be organized, not calculated to enlist the feelings and receive the cordial approbation and support of a majority of the citizens, cannot be relied upon to effect the object desired, viz; that of furnishing to the greatest number of the rising generation, upon equal terms, the best education that the resources of the State, and of its citizens generally, will justify.

.....

The cultivation of the mental faculties for the promotion of wisdom, morality and virtue, is amongst the first duties of a State. The chief object of constitutions and laws being to render its citizens secure in their lives, liberty and property, the importance of a good education to each individual, to every community, and to the State, cannot be too highly valued. It is certainly of too great value to be estimated by any pecuniary consideration.

.....

Where a right direction is given to the young and tender mind, correct principles inculcated and impulses given, morality, virtue and reason commence their reign, and with the necessary culture fit their possessors to be useful to themselves, ornaments to society, and safe-guards to the State. The strength of the State and the happiness of its people increase with the increase of useful knowledge. Without knowing their rights and duties men become dangerous to the State, nuisances to the community, and burdensome to themselves. By laying the foundation of a system susceptible of being carried into practical operation, and which will secure to the rising generation the means by

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which they may be educated.

Section 2 of the report proper proposed to embody in the state's organic law the following:

The legislature shall encourage the institution of common schools throughout the State for the promotion of literature and the arts and sciences, and shall provide means for that purpose and for their support.¹⁵

After an interval of slightly more than two months the report was called from the table. For the section pertaining to the institution of schools, the following substitute was offered:

"The legislature shall establish throughout the State a system of free schools, for the education of all the children of the people of the State, and shall provide the means for that purpose, and for their support."¹⁷ There were some in the convention who were opposed to any provisions for public education and others who were very reluctant to make it mandatory that the legislature should provide for the establishment of free public schools, as is indicated by the spirited discussions between them and the advocates of the proposed section.¹⁸ Nevertheless, the constitutional provisions as finally adopted were: "The Legislature shall establish free Public Schools throughout the State, and shall provide means

¹⁵ Ibid., pp. 316-318.

¹⁶ Ibid., p. 319.

¹⁷ Ibid., p. 902.

¹⁸ Ibid., pp. 903-907.

for their support by taxation on property or otherwise."¹⁹

Evidently, the delegates chosen to revise the state's organic law in 1852 were satisfied with the constitutional sanction of a public school system as provided by the framers of the previous document, for they incorporated that feature in article 136 of the Constitution of 1852 and added thereto a provision for the distribution of the funds previously authorized.²⁰

When the question of circumscribing the state's responsibility toward education was being considered by the writers of the Constitution of 1864 there were underlying currents of conflicting issues growing out of the War for Southern Independence. Provisions for educational opportunities for the children of the white and colored races presented a difficult problem. In the first report on schools made by Alfred C. Hills, chairman of the committee on public education, it was proposed: "The General Assembly shall establish free public schools throughout the State for all children . . . but all schools for colored children shall be separate and distinct from schools for white children."²¹ This report brought the question of providing public schools for colored children to an issue and much time was consumed in

¹⁹Constitution of Louisiana, 1845, art. 134.

²⁰Journal of the Convention to Form a New Constitution for the State of Louisiana, 1852, p. 86.

²¹Official Journal of the Proceedings of the Convention for the Revision and Amendment of the Constitution of the State of Louisiana, 1864, p. 42.

discussions over the extension of the state system to include colored children.²² Some even sought to change "shall" to "may" so that the matter of establishing public schools for colored children might be left to the discretion of the legislature.²³ Notwithstanding the conflicting opinions concerning the state's acceptance of the responsibility of educating a special race, the compromising article as adopted required that: "The Legislature shall provide for the education of all children of the State, between the ages of six and eighteen years, by maintenance of free public schools by taxation or otherwise."²⁴

Apparently, the delegates to the Constitutional Convention of 1867-1868 were controlled by radicals who believed that the children of both races should attend school in the same institutions. Soon after the committee on education was organized it was instructed by resolutions and ordinances to provide that all the children of the state shall "attend school in the same schoolhouses,"²⁵ that no municipality "shall make any rules or regulations contrary to the spirit and intention"²⁶ of the constitution, and that

²²Debates in the Convention for the Revision and Amendment of the Constitution of the State of Louisiana, 1864, pp. 138, 143, 476, 483, 502.

²³Ibid., p. 161.

²⁴Constitution of Louisiana, 1864, art. 141.

²⁵Official Journal of the Proceedings of the Convention for Framing a Constitution for the State of Louisiana, 1867-1868, p. 17.

²⁶Ibid.

educational opportunities be offered to all children without regard to race or color.²⁷ Even the committee itself was divided over these controversial issues.²⁸ Further evidence of a strong sentiment in the convention to make ample provisions for the colored children was indicated in a proposed resolution which directed the legislature to establish at least six public schools in every parish for all children between six and twenty-one years of age without distinction as to race or color.²⁹ These conflicting opinions were perplexing problems throughout the convention.³⁰ Notwithstanding the several attempts of a conservative group to provide for the establishment of separate schools for the two races, the state's function with respect to education was specified as follows:

The General Assembly shall establish at least one free public school in every parish throughout the State, and shall provide for its support by taxation or otherwise. All children of this State, between the ages of six (6) and twenty-one (21) shall be admitted to the public schools or other institutions of learning sustained or established by the State, in common, without distinction of race, color or previous condition. There shall be no separate schools or institutions of learning established exclusively for any race by the State of Louisiana.

No municipal corporation shall make any rules or regulations contrary to the spirit and intention of article one hundred and thirty-five (135).³¹

²⁷Ibid., p. 45.

²⁸Ibid., p. 60.

²⁹Ibid., p. 154.

³⁰Ibid., pp. 94, 107, 200-202.

³¹Constitution of Louisiana, 1868, arts. 135-136.

The delegates in the Constitutional Convention of 1879 found that the power of the state to establish public schools was no longer an issue. Since the two previous conventions reflected the views held by radical reconstructionists, who were determined to establish a unitary system of public schools, regardless of race or color, it is difficult to understand why this convention, which was dominated by Louisiana Democrats, assumed such a tolerant attitude toward the children of different races. Superintendent Thomas H. Harris says that it might have been because of anticipated interference from Congress.³² The proposal of a new phase of the state's function demanded attention at this time--it was the inclusion of high schools as a part of the approved system.³³ Herein, the advocates were attempting merely to be consistent with the established policy of the famous Kalamazoo case.³⁴ Excerpts from the report advocating the public high school reveal some of the grounds of support of the new move to be:

It is true, that but a comparatively small number of children attend the high schools of our cities and towns, but wherever well managed, their uplifting, infiniting influence is felt in every school of lower grade and by every pupil. The high school is the sun that gives light and

³²Thomas H. Harris, The Story of Public Education in Louisiana (New Orleans, 1924), p. 52.

³³Official Journal of the Proceedings of the Constitutional Convention of the State of Louisiana, 1879, p. 168.

³⁴Charles E. Stuart and others v. School District No. 1 of the Village of Kalamazoo and others, (1874) 30 Mich. 69.

Apparently, the majority of the framers of the constitution considered the implication of organic sanction sufficient to legalize the high school, as is indicated by the provisions:

There shall be free public schools established by the General Assembly throughout the State for the education of all the children of the State between the ages of six and eighteen years; and the General Assembly shall provide for their establishment, maintenance and support by taxation or otherwise. And all moneys so raised, except the poll tax, shall be distributed to each parish in proportion to the number of children between the ages of six and eighteen years.³⁶

The establishment of public schools was not an issue in the Convention of 1898, for it was practically unanimous that there should be provision for "free public schools for the white and colored races" in separate institutions.³⁷ A new feature was given legal recognition when the system was extended downward to include kindergarten children from four to six years of age.³⁸ Further evidence that education is a function of the state was the provision: "The General Assembly shall not pass any local or special law . . . Regulating the management of public schools, the building or repairing of schoolhouses, and the raising of money for such purposes."³⁹

The Constitutional Convention of 1913 was called on the condition that only certain phases of the previous constitution would be considered. Public Education was one of the subjects which were to remain intact, as may be seen by the

³⁶ Constitution of Louisiana, 1879, art. 224.

³⁷ Official Journal of the Proceedings of the Constitutional Convention of the State of Louisiana, 1898, p. 290.

³⁸ Constitution of Louisiana, 1898, art. 248.

³⁹ Ibid., art. 48.

president's statement to the convention: "You are not to change existing laws relating to . . . the educational system of the State; . . ."40

The framers of the Constitution of 1921 were in accord with the policies adopted by previous constitutional conventions, for they made no essential changes in the organic law pertaining to the establishment of free public schools.⁴¹ This harmonious attitude indicates that the state's power and duty to establish a system of free public schools had been an accepted policy for many years. Organic sanction was given to secondary education as a part of the public school system, which phase had formerly been implied through the offering of educational opportunities to all adolescent youth. This recognition was expressed in the following terms: "The elementary and secondary schools and the higher educational institutions shall be so coordinated as to lead to the standard of higher education established by the Louisiana State University and Agricultural and Mechanical College."⁴²

Thus, it may be seen that according to the Federal Constitution, education was one of the undelegated powers, which were reserved by the states to be exercised at their discretion. That the populace of Louisiana was conscious of the state's responsibilities to provide education for its

⁴⁰Official Journal and Calendar of the Proceedings of the Constitutional Convention of the State of Louisiana, 1913, pp. 11-12.

⁴¹Constitution of Louisiana, 1921, art. 12.

⁴²Ibid., sec. 2.

youth is evidenced by the fact that her legislature, acting on its established rights, made provisions for free public schools before her organic laws authorized them. However, since 1845 the state's constitutions have made it mandatory that a system of free public schools be established throughout the state. Not only has this policy been upheld, but also the system has been expanded to include children of color, the kindergarten, and the secondary school.

JUDICIAL INTERPRETATIONS

Public Schools as State Institutions

General bases. It has been stated that in an effort to define the function of public schools in organized society:

. . . the courts have been forced by necessity to formulate a theory of education based upon what they deem to be fundamental principles of public policy. In legal theory the public school is a state institution. . . . The function of the public school, in legal theory at least, is not to confer benefits upon the individual as such; the school exists as a state institution because the very existence of civil society demands it.⁴³

"The doctrine that education is a function of the state is well established in American law."⁴⁴

One theory for the establishment of a public school system as a function of government is that it is not the child

⁴³ Newton Edwards, The Courts and the Public Schools (Chicago, 1933), p. 1.

⁴⁴ Ira M. Allen, The Teacher's Contractual Status (New York, 1928), p. 4.

which is the direct beneficiary of its service, but that the system "was brought into being in order to promote the general welfare."⁴⁵ Numerous opinions to this effect have been found, for example: "'The primary purpose of the maintenance of the common school system is the promotion of the general intelligence of the people constituting the body politic and thereby to increase the usefulness and efficiency of the citizens, upon which the government of society depends.'"⁴⁶

The theory of public education in Louisiana is expressed by its State Department of Education as follows:

For more than one hundred years public education has been recognized as one of the most important functions of the State Government. It is the keystone of the arch upon which rests the superstructure of our democracy. The framers of our Federal Constitution left the responsibility for public education to the States. Whether this was wise or unwise, the fact remains that each State has met this responsibility in its own way by setting up a school system and providing funds for its support. The theory underlying public instruction as a state function has its basis in the fact that the maintenance and perpetuation of our democratic institutions necessarily rests upon an educated citizenship. If this theory is sound--and we all accept it--then, the success of our Government and the continuance of our social institutions depend upon the efficiency and success of the public school system. It is the foundation of our future generations. We must train our youth, through these public institutions, in the hope and belief that such training will fit them for the responsibilities of citizenship.⁴⁷

⁴⁵Hermann H. Schroeder, op. cit., p. 23.

⁴⁶Ibid., p. 24.

⁴⁷State Department of Education of Louisiana, Eighty-fourth Annual Report, for the Session 1932-33 (Baton Rouge, 1933), p. 31.

In the same connection, one of the state's supreme court justices has said:

Education is one of the functions of government; and the public school system is a department of the government. Education insures domestic tranquility, provides for the common defense, promotes the general welfare, and it secures the blessings of liberty to ourselves and our posterity. The State of Louisiana from the earliest time has made provision for the support of education, beginning with the Constitution of 1845, arts. 135 and 136.⁴⁸

In 1931 the supreme court handed down a decision⁴⁹ in which it was necessary to define the status of public education. In the language of the court, it was stated:

. . . it may be observed that the public school system of the state is a state institution. This is obvious from Section 1 of Article 12 of the Constitution which provides that: "The educational system of the State shall consist of all free public schools, and all institutions of learning supported in whole or in part by appropriation of public funds."⁵⁰

This ruling upheld former decisions in maintaining that education is a function of the state.⁵¹

Land grants to the state. The granting of school lands by the Federal Government to the various states further establishes that education is a state function. In this connection, the supreme court of Louisiana has said:

⁴⁸Herold et al. v. Parish Board of School Directors et al., (1915) 136 La. 1042-1043.

⁴⁹State ex rel. Wimberly v. Barham et al. State ex rel. Gray v. Pipes et al. State ex rel. White v. Mason et al. (1931) 173 La. 488, 137 So. 862.

⁵⁰Ibid., 173 La. 494.

⁵¹The State ex rel. Board of Directors of Public Schools of New Orleans v. City of New Orleans, (1890) 42 La. Ann. 92, 7 So. 674.

The sixteenth section of every township of the public lands of the United States have, from the adoption of the Constitution, been reserved from public sales, for the maintenance of public schools in the township; and this reservation has always been considered a grant to the State in which it lies, on the admission of the State into the Union. It must amount to a grant; because Congress have no power under the Constitution, to administer property for the purposes of education, within the limits of a sovereign State; . . .⁵²

School tax as a state tax. Another indication that education is a state function is the school law pertaining to taxation. "Many citizens, including many school officers, seem to have difficulty in grasping the idea that school taxes are state taxes, even where they are levied locally. Not so with the courts. They do not lose sight of the fact that taxes levied for school purposes are levied in support of a State school system."⁵³ In 1898 Louisiana made provisions for parish, municipal, and public board taxes for all purposes whatsoever not to exceed ten mills yearly.⁵⁴ When a railroad company refused to pay such tax under its exemption rights from ordinary taxes, its claim was upheld by the court.⁵⁵ The status of a tax so levied was established as follows:

Indeed, the fact that the tax is in aid of the public schools shows conclusively that it is a mere ordinary tax. How could a tax in aid of the public schools be a special assessment when the maintenance of the public schools is one of the most ordinary of the ordinary charges of our government, and, by the most elementary principles,

⁵²Robert Garland et al. v. Thomas M. Jackson et al., (1852) 7 La. Ann. 68.

⁵³Fermann H. Schroeder, op. cit., p. 58.

⁵⁴Constitution of Louisiana, 1898, art. 232.

⁵⁵Louisiana & N. W. R. R. Co. v. State Board of Appraisers (Board of School Directors of Parish of Matchitoches et al., Interveners), (1908) 120 La. 471, 45 So. 394.

our government must have recourse to ordinary taxation for meeting its ordinary charges, and cannot have recourse to special assessment, and if, as is well settled in our jurisprudence, the limitations of the Constitution upon taxation do not apply to special assessments, the situation would be that for meeting its ordinary charges our government could levy unlimited taxes simply by pretending that they were special assessments. If the present tax were a special assessment, the situation would be that, notwithstanding the limitation placed upon taxation in the Constitution, the Legislature could authorize the parishes to levy unlimited taxes in aid of the public schools. No one would pretend that the Legislature could do anything of the kind.⁵⁶

The construction and maintenance of public schools are ordinary charges of the government which must be supported by ordinary or general taxation and not relegated to any special assessment upon any particular class of taxpayers.⁵⁷

Thus, in various decisions which have designated the support of public schools as one of the ordinary charges of the state, it has been definitely implied that public education is a function of the state.

Municipal and parish power indicative of state function. The state legislature's power relative to the jurisdiction of parishes and municipalities in the support of public schools is a further indication that education is a function of the state. It has been explained that:

. . . when a municipal body, or a county, or a school district, levies taxes for school purposes, the tax so levied is a State and not a municipal,

⁵⁶ Ibid., 120 La. 473.

⁵⁷ Guaranty Bank & Trust Co. v. Ward Lumber Co., (1926) 161 La. 603, 109 So. 496.

county or district tax, although it be levied and collected by municipal or county or district officers. The fact that a tax is levied and collected for the State by these agencies of the State appointed for that purpose does not deprive it of its character as a State tax.⁵⁸

This test was made when the board of directors of the public schools of New Orleans attempted to have enforced a legislative act⁵⁹ which purposed to compel the city to make certain appropriations for the schools.⁶⁰ It was pointed out that the legislature was required to provide for the support of the system of schools⁶¹ and to authorize parishes to levy taxes within certain limits for assistance in that respect.⁶² In furtherance of that provision, parochial authorities were empowered to raise such tax at their discretion.⁶³ In the same statute, provision was made for the city of New Orleans, which is also the parish of Orleans, to appropriate from the revenue derived from her constitutional tax levy an amount sufficient, according to her discretion, for school purposes, but later in the section the exercise of that power was circumscribed by the designation of a minimum limit.⁶⁴ The city, acting according to the authority of its charter

⁵⁸Hermann H. Schroeder, op. cit., p. 59.

⁵⁹Acts of Louisiana, 1888, No. 81, sec. 71.

⁶⁰The State ex rel. Board of Directors of Public Schools of New Orleans v. City of New Orleans, (1890) 42 La. Ann. 92, 7 So. 674.

⁶¹Constitution of Louisiana, 1879, art. 224.

⁶²Ibid., art., 229.

⁶³Acts of Louisiana, 1888, No. 81, sec. 54.

⁶⁴Ibid., sec. 71.

and under the assumption that the amount it should budget to public education was discretionary, allocated an amount not in keeping with the statutory direction. It was held that the city was acting within its constitutional rights and that the legislative enactment defining such limits was unconstitutional, for "if by the terms of the Constitution, or by fair implication from them, it appears that the Legislature can not compel the city to make any appropriation for school purposes, it irresistibly follows that the Legislature is not permitted to do so, either by special or general legislation, or by an amendment of the charter."⁶⁵

In support of this decision reference was made to a former case involving the same question of discretionary power with respect to the levying of a school tax in the parishes. There it had been held that legislation upon education must have constitutional authority, because public education is a responsibility of the state.⁶⁶

Definitely the court, in the case at bar, held that education is a state function when it said: "The system of public education in Louisiana is a State institution, and as such, is placed under the control and protection of the State by the very terms of the Constitution."⁶⁷

⁶⁵The State ex rel. Board of Directors of Public Schools of New Orleans v. City of New Orleans, (1890) 42 La. Ann. 100.

⁶⁶State ex rel. Parish Board of School Directors v. Police Jury, (1888) 40 La. Ann. 755, 5 So. 23.

⁶⁷The State ex rel. Board of Directors of Public Schools of New Orleans v. City of New Orleans, (1890) 42 La. Ann. 100.

The annulment of an ordinance of one of the city corporations which purposed to provide for the creation and maintenance of a high school⁶⁸ again established that public education is a responsibility, not of the municipality, but of the state. This privilege of providing for a school was not authorized in the city's charter but was attempted to be executed under the provision of the general welfare clause. In keeping with its policy of decrees on this subject, the court maintained that the controlling act which permitted a city corporation to revise its charter did not authorize the incorporation of the power to levy a tax for the maintenance of a high school when that power had not been granted originally in its charter. With reference to the allocation of powers pertaining to education Justice Samuel D. McEnery said:

Public education is declared by the Constitution to be an affair of the State, and it assumes the whole responsibility of public education.

.

The subject of education is an important matter, and it is so treated by the State, as it seems to be jealous of the exercise of the power by subordinate political corporations, as it has not granted local self-taxation for this purpose.⁶⁹

School officers as state officials. The officers of the public schools "are state officers. Consequently, they may be selected in any manner that the legislature may

⁶⁸A. T. Nelson et als. v. Mayor and Selectmen of the Town of Homer, (1896) 48 La. Ann. 258, 19 So. 271.

⁶⁹Ibid., 48 La. Ann. 259-260.

determine. They may be elected by the people, be appointed by the courts, or be selected by any other agencies which policy may dictate."⁷⁰ "And even though such officers are locally elected, they are the agents of the state, not of the locality."⁷¹

Judicial decisions in Louisiana have upheld the theory that since education is a state institution,⁷² its officers, whose duties concern the entire state or the general public in a limited territory, are state officers.⁷³ For example, it has long been an established policy to consider the boards of school directors an important feature in the system of public education established by the state, and to expect them to serve as official agents of the state in the administration of that system.⁷⁴ The state superintendent of public education as an officer of the state not only is assured legal advice in matters pertaining to his official duties, but has no authority to appear in court except through the attorney general or district attorney of his vicinity.⁷⁵ In a case, which

⁷⁰Newton Edwards, op. cit., p. 7.

⁷¹Hermann H. Schroeder, op. cit., p. 55.

⁷²The State ex rel. Board of Directors of Public Schools of New Orleans v. City of New Orleans, (1890) 42 La. Ann. 92, 7 So. 674.

⁷³State ex rel. Wimberly v. Barham et al. State ex rel. Gray v. Pipes et al. State ex rel. White v. Mason et al. (1931) 173 La. 488, 137 So. 862.

⁷⁴The School Board of Union Parish v. J. E. Trimble, (1881) 33 La. Ann. 1073.

⁷⁵Edwin H. Fay, Superintendent of Public Education v. Allen Jumel, Auditor, and E. A. Burke, Treasurer, (1883) 35 La. Ann. 368.

sought to determine the official status of the parish superintendent,⁷⁶ the appellants' presentation of the theory that the "'educational system of a state is one of the most vital instruments of its sovereignty'"⁷⁷ was endorsed, and it was held that the parish superintendent "is an officer of the greatest importance to the educational interests of this state."⁷⁸

High school support by taxation legalized. Twenty-eight years after the famous Kalamazoo case, which first legalized the support of high schools by taxation, the supreme court of Louisiana was called upon to determine the legal status of the high school in relation to the public school system. The right to establish and support the high school as an integral feature of the system was questioned in the Andrus case,⁷⁹ where taxpayers objected to the use of a portion of the school fund for high schools, claiming that all of it should be used for the support of the elementary schools. In the court's answer the right to establish and support high schools and their existence as a part of the state system of public education were maintained as follows:

The "high school" is well known in the public school system of this state, and in the legislation and literature concerning that system as an institution in which scholars from the various common

⁷⁶State ex rel. Smith et al. v. Theus, District Attorney, (1905) 114 La. 1097, 38 So. 870.

⁷⁷Ibid., 114 La. 1103.

⁷⁸Ibid.

⁷⁹Andrus et al. v. Board of Directors of Parish of St. Landry, (1902) 108 La. 386, 32 So. 420.

schools complete their public school education; and, if no other language had been used, the authority conferred upon the parish boards to establish "high schools" would suggest the idea of schools having a sphere of usefulness different from, if not wider than, that of the common schools of a single district. The language of the law is, however, "central, or high, schools," thus making "high schools" and "central schools" synonymous terms, and leaving no room for reasonable doubt that it was the intention to authorize the parish boards to establish not only such district schools as they might see proper, but with the concurrence of the state board, and upon the conditions specified, to establish central schools for higher education, to which the district schools may serve as feeders. And the authority to establish such schools, considered in connection with the general power and discretion vested in the school boards, carries with it the authority to maintain them from the general school fund.⁸⁰

Junior colleges an extension of secondary education.

That Louisiana has legalized as a part of her state system the upward extension of secondary education in the form of the junior college is evidenced by statutory law,⁸¹ legal opinion,⁸² and decisions of the supreme court. In the McHenry case⁸³ the school board of Ouachita Parish had proceeded to establish a junior college district for the purpose of submitting to the qualified electors therein the question of levying a tax for the construction and maintenance of a junior college at Monroe. Promulgation had been declared in favor of the tax. To prevent the school board from executing the levy

⁸⁰Ibid., 108 La. 392-393.

⁸¹Acts of Louisiana, 1928, No. 173.

⁸²Opinions of the Attorney General of Louisiana, May 1, 1928, to April 30, 1930, p. 498.

⁸³McHenry et al. v. Ouachita Parish School Board, (1929) 169 La. 646, 125 So. 841.

their action was attacked on grounds of unconstitutionality of the controlling act.

The supreme court ruled in favor of the defendants, the parish board, in reversal of the district court decision. This opinion on a new phase of the state school system established several bases of the policy that the state's responsibility for public education may extend to include the junior college.

The constitution made mandatory the proper coordination of the public schools so as to lead to the standards of higher education⁸⁴ but left to the legislature the method of effecting this. The response of that body was Act. No. 173 of 1928 which provided for the establishment of junior colleges in parish-wide districts under the governing authority of the parish school board. Such junior colleges are differentiated from the higher institutions of learning, as they "have no legal existence or status whatever, except in connection with a state high school, are purely local institutions, are maintained by local taxation, and are created for the sole purpose of supplementing the course of studies prescribed in the high schools of the state."⁸⁵ Further, the court established the status of the junior college in relation to the high school:

"Junior Colleges" are mere super-high schools, and not institutions of higher learning

⁸⁴Constitution of Louisiana, 1921, art. 12, sec. 2.

⁸⁵McHenry et al. v. Ouachita Parish School Board, (1929) 169 La. 655.

of the state. For these reasons, a special tax may be levied under Act No. 173 of 1928 for the construction and maintenance of a "Junior College" as validly as for the construction and maintenance of a schoolhouse for any state public high school.⁸⁶

In the decree the constitutionality of the act creating parish junior colleges was upheld; thereby their existence as a part of the state public school system was legally recognized.

Public schools as continuous institutions. When a parish school board ordered by resolution that certain schools be closed for a year, this being their discretionary method of changing to a fiscal year basis in accordance with recent enacted legislation, they were met with the judicial demand to open the schools in question and the decree that public schools are continuous institutions.⁸⁷ In dealing with the question of the closing of the schools the court established some of its policies in relation to the schools as follows:

We are dealing here with new and experimental legislation. Public education is a state institution, fostered by the state, and for which the state is required by the constitution to provide.

.

We cannot assume that legislation, impossible in its enforcement, without disaster to the public school system of the state, has been adopted. Laws are presumed to be constructive

⁸⁶Ibid., pp. 658-659.

⁸⁷State ex rel. Day et al. v. Rapides Parish School Board, (1925) 158 La. 251, 103 So. 757.

and not destructive, when relating to the institutions, which it is the duty of the state to protect.

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It is therefore clear that neither the state board of education nor the state Legislature intended any sudden and drastic action by parish school boards that might eventuate in the closing of the public schools for an entire year, prior to July 1, 1928, as the result of the enforcement of the provisions of the act of 1922.⁸⁸

Herein the court held that the public schools are not only a function of the state government, but also that their operation must be continuous by sessions, although their closing for a year seemed a practical way of assuring a sound financial basis.

SUMMARY

The theory that education is a function of the state is reflected both by legal implications and judicial interpretations.

Legal Implications

The legal implications which seem to show that education is a function of the state are principally the following:

1. The Ordinance of 1787 recognized the state as the governing authority of public education.

⁸⁸Ibid., 158 La. 254-255.

2. In the Federal Constitution education was one of the undelegated powers and was thereby reserved as a state function.

3. It is obvious that Louisiana's populace was cognizant of the state's educational responsibilities, for the legislature, acting on its prerogatives, provided for public schools long before the organic law made this action mandatory.

4. Since 1845 the constitutions of the state have embodied the underlying principles of public education and have required the legislature to provide for a system of free public schools throughout the state.

5. The framers of the constitutions during the period of Reconstruction emphasized the establishment of educational facilities for all children of school age without regard to race or color.

6. Since the Constitution of 1879 educational provisions have been made for all children of school age with a separation of the white and colored races.

Judicial Interpretations

On the theory that the welfare of a democratic society depends on an educated populace, the state declares through judicial interpretations the following:

1. The primary purpose of the public school is to promote the general intelligence of the people and thereby increase the efficiency of the state's citizenry.

2. The public schools are state institutions, since education is a function of the government.

3. The granting of school lands to the state by the Federal Government further establishes that education is a responsibility of the state.

4. Taxes for the support of public education, whether levied by a municipality, a district, a parish, or the state, are classified as ordinary taxes.

5. Since education is a public function, all school officers are agents of the state.

6. The right to establish and support high schools as a part of the state system of public education is recognized.

7. Recently the junior college has been considered as an extension of secondary education and, therefore, included in the free public school system.

8. Public schools are continuous institutions by sessions and the officials are not permitted to interfere with this continuity.

CHAPTER IV

PUBLIC SCHOOL SUPPORT THROUGH LAND GRANTS

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The legal basis of public school finance is established on the theory that education for a democracy is indispensable.¹ If education is a function of the state--and it has been reasonably shown that the state has the power to establish free public schools throughout its dominion--it logically follows that the state has power to provide for its support. "Where the power to do any given thing is granted by the law, the means whereby this power may be exercised is likewise granted."² The avenues through which Louisiana supports her public schools have been divided --for treatment by chapters in this study--into three groups: land grants, general funds, and special funds. In presenting each group the purpose is to show the legal basis of public school support as revealed by judicial interpretations of the organic and statutory laws pertaining to that particular source. In dealing with such legal aspects, an attempt is

¹Arthur B. Moehlman, Public School Finance (Chicago, 1927), p. 6.

²State of Louisiana ex rel. Warren Easton v. Treasurer of Board of School Directors of New Orleans, (1906) 3 Orl. App. 391.

made to bring out pertinent issues and dominant policies which the state has pursued in the financing of her free public schools. The present chapter treats the first phase-- that is, support of the public schools through land grants.

SCHOOL LANDS AND THEIR PROCEEDS

Development as Source of Revenue

The principle of Federal aid for the support of public schools antedates the period of statehood. The court has explained the origin of this support as follows:

"The practice of setting apart section No. 16 of every township of public lands for the maintenance of public schools is traceable to the ordinance of 1785, being the first enactment for the disposal by sale of the public lands in the western territory. The appropriation of public lands for that object became a fundamental principle by the ordinance of 1787, which settled terms of compact between the people and states of the northwestern territory, and the original states, unalterable except by consent. One of the articles affirmed that 'religion, morality, and knowledge, being necessary for good government and the happiness of mankind,' and ordained that 'schools, as a means of education, should be forever encouraged.'"³

The Constitution of the United States gives Congress the power to sell or otherwise dispose of her public lands. Relative to the exercise of this power with Louisiana lands the court has said:

³ Board of Directors of Public Schools of Parish of Orleans v. New Orleans Land Co., (1915) 138 La. 32.

Shortly after the cession of Louisiana to the United States, by the eleventh section of an act of Congress, approved the 21st of April, 1806, the President of the United States was authorized to offer for sale, such of the public lands lying in the Western District of the Territory of Orleans, as were surveyed, with the exception of sections sixteen, which, in the language of the act, "shall be reserved, in each township for the support of schools within the same."⁴

Thus, since 1806, the sixteenth sections in Louisiana have been set apart for public school support.

The principles underlying the designation and assignment of sixteenth sections have been legally interpreted as follows:

"Until the survey of the township and the designation of the specific section, the right of the state rests in compact--binding, it is true, the public faith, and dependent for execution upon the political authorities. Courts of justice have no authority to mark out and define the land . . . subject to the grant. But when the political authorities have performed this duty, the compact has an object, upon which it can attach, and if there is no legal impediment the title of the state becomes a legal title. . . ." *Cooper v. Roberts*, 18 How. 179, 15 L. Ed. 338.

A survey made by the government must be held conclusive against any collateral attack in controversies between individuals. After a survey of the township has been made by the proper United States authorities, and section 16 of a named township has been made and placed, the said section becomes the property of the state for school purposes from the date of such survey.⁵

⁴Robert Garland et al. v. Thomas M. Jackson et al., (1852) 7 La. Ann. 68.

⁵Board of Directors of Public Schools of Parish of Orleans v. New Orleans Land Co., (1915) 138 La. 33.

Some of the early steps taken by the state to realize results from its lands reserved for school support were legislative resolutions to Congress emphasizing the necessity of making the school lands available for purposes of support,⁶ and urging additional grants⁷ and special provisions⁸ to meet the particular needs of Louisiana, as expressed in one of the resolutions:

Whereas on account of the peculiar topography of the State of Louisiana, the sixteenth section assigned in every township for the use of public schools is so often located on marshes and other lands of no value that about one-fifth of the lands appropriated for primary instruction, are to be considered as entirely worthless; and whereas, in consequence of other townships being completely covered by private claims, it is estimated that about thirty-eight thousand acres more are lost to the state, for want of public lands to apply to school purposes: therefore,

Be it resolved by the Senate and House of Representatives of the State of Louisiana, in general assembly convened, That our senators and representatives in congress be and are hereby requested to obtain from congress the passage of a law giving to this state, in all cases where the sixteenth section in any township is composed of worthless land, or where that section or any part thereof is covered by previous valid title, the right of selecting and entering, for the benefit of primary schools, the same quantity of public land, to be located in the same township, or, in default of good land therein, in such adjacent townships as may furnish lands not yet appropriated, and of more value.

Be it further resolved, &c., That our senators and representatives are moreover requested to unite their best exertions to obtain a law from

⁶ Acts of Louisiana, 1820-21, "A Resolution," pp. 130-132.

⁷ Ibid., 1835, "Resolution," pp. 5-6.

⁸ Ibid.: 1839, Resolution No. 11; 1845, No. 54.

congress giving the general assembly of this state power and authority to rent, lease or sell as may be deemed expedient or necessary, the sixteenth sections of school lands situated therein.⁹

By Congressional enactment in 1843¹⁰ Louisiana's legislature was authorized to provide for obtaining revenue from the school lands through sales thereof. In 1845 the state's constitution provided for the development and protection of this means of school support:

The proceeds of all lands heretofore granted by the United States to this State for the use or support of schools, and of all lands which may hereafter be granted or bequeathed to the State, and not expressly granted or bequeathed for any other purpose, which hereafter may be disposed of by the State, . . . shall be held by the State as a loan, and shall be and remain a perpetual fund, on which the State shall pay an annual interest of six per cent; which interest together with all the rents of the unsold lands, shall be appropriated to the support of such schools, and this appropriation shall remain inviolable.¹¹

Since the state acquired complete title to all school land grants through the final approval in 1873 of the official surveys, it has been held that the legislature from that date was free to provide for the administration of the school lands as it saw fit.¹²

⁹ Ibid., 1841-42, No. 48.

¹⁰ Acts of Congress, 1842-43, "An Act to authorize the Legislatures of the States of Illinois, Arkansas, Louisiana, and Tennessee, to sell the lands heretofore appropriated for the use of schools in those States," ch. xxxiii.

¹¹ Constitution of Louisiana, 1845, art. 135.

¹² Meyer v. State, (1929) 168 La. 146, 121 So. 604.

Constitutional provisions pertaining to the sixteenth sections remained unchanged from 1845 to 1879. It is reasonable to assume that much of the school land was disposed of during this interval of thirty-four years. That practically all proceeds from the sales of such lands were lost during the War for Southern Independence and Reconstruction is common knowledge.¹³ Evidence for this assumption is added by the provisions of the Constitution of 1879 to the effect that:

The debt due by the State to the free school fund is hereby declared to be the sum of one million one hundred and thirty thousand eight hundred and sixty-seven dollars and fifty-one cents in principal, and shall be placed on the books of the Auditor and Treasurer to the credit of the several townships entitled to the same; the said principal being the proceeds of the sales of lands heretofore granted by the United States for the use and support of free public schools, which amount shall be held by the State as a loan and shall be and remain a perpetual fund, on which the State shall pay an annual interest of 4 per cent from the first day of January, 1880, and that said interest shall be paid to the several townships in the State entitled to the same, in accordance with the act of Congress, No. 68, approved February 15, 1843, and the bonds of the State heretofore issued, belonging to said fund and sold under act of the General Assembly No. 81, of 1872, are hereby declared null and void, and the General Assembly shall make no provision for their payment, and may cause them to be destroyed.¹⁴

Further provisions for securing permanency to this source of revenue were made by the Constitutional Convention of 1921:

¹³Thomas H. Harris, The Story of Public Education in Louisiana (New Orleans, 1924), p. 49.

¹⁴Constitution of Louisiana, 1879, art. 233.

Where sixteenth sections or indemnity lands granted by Congress for public school purposes, have been erroneously sold by the State, or paid by the State as fees for services rendered, such deficiencies shall be properly adjusted, and the fund, so derived, shall be credited to the several townships and be treated as a loan to the State on which it shall pay four per cent per annum interest. The Legislature shall enact all necessary laws to carry this section into effect.

The debt due by the State to the free school fund arising from the sale of lands granted by Congress for school purposes shall remain a perpetual loan to the State on which it shall pay to the several townships four per cent (4%) per annum interest.¹⁵

Disposition of School Lands

In 1843 Congress authorized the Louisiana legislature to provide for the sale of the sixteenth section lands and the conveyance of a fee simple title to the purchasers.¹⁶ The legislature made the first provisions therefor by Act No. 321 of 1855 in which the manner of sale and the disposition of the proceeds were prescribed. For the inhabitants of the township wherein the section is located the state became the trustee, both of the lands and of the proceeds from their sale, and in transactions the state or its legalized representative is charged with the disposition.

¹⁵ Constitution of Louisiana, 1921, art. 12, secs. 18-19.

¹⁶ Acts of Congress, 1842-43, "An Act to authorize the Legislatures of the States of Illinois, Arkansas, Louisiana, and Tennessee, to sell the lands heretofore appropriated for the use of schools in those States," ch. xxxiii, sec. 1.

State as trustee. The trusteeship of the state was recognized by the Congressional Act of 1843 to the extent that the legislature was authorized to provide for the sale of the lands reserved to the schools and for the investment of the money arising from such sales in some productive fund, of which the proceeds were to be forever applied to the use and support of the schools, under the provision that no sale was to be made without the consent of the inhabitants of the township in question. Although inconsistency of assumptions is indicated when Congress gave a qualified permission to sell sixteenth sections after the lands had ceased to belong to the United States, this gift of the school lands to the state has been held absolute.¹⁷ The state had the power to sell the lands without the consent of Congress. No attack on the validity of a sale can be sustained if the basis of complaint is only that the sale was not made in the manner prescribed by the Congressional Act of February 15, 1843.¹⁸ He who has bought school land under the laws of the state is decreed the rightful owner in contest with a claimant holding a patent shown to have been issued erroneously by the Federal Government.¹⁹ The United States parted with the title when the land

¹⁷James W. Cooper, Plaintiff in Error, v. Enoch C. Roberts, (1855) 18 How. 173, 15 L. Ed. 338; State of Alabama, Plaintiff in Error, v. Eddie Schmidt, (1913) 232 U. S. 168, 34 S. C. 301, 58 L. Ed. 555.

¹⁸State of Louisiana, by School Board of Parish of Tangipahoa, v. William T. Joyce Co. et al., (1919) (Cir. Ct. of App.) 261 Fed. 128.

¹⁹Cullen McCastle v. J. J. B. Chaney et al., (1876) 28 La. Ann. 720.

was selected by the state as school land; the title remained in the state until the time of the sale. However, one who has been in possession without legal title may rightfully expect reimbursement for improvements from one to whom the land must be surrendered after legal purchase.²⁰

Court decrees concerning who have the right to stand in judgment for a sale of school lands have followed the policy of recognizing the state as trustee. When one purchaser excepted to the right of the state treasurer to sue for the rescission of a sale, this right of the state treasurer, to whom the notes were made payable, was maintained.²¹

In refusing to uphold the right of a parish board to represent the state in a land suit in 1880, Chief Justice Thomas C. Manning, with relation to a previous decision which had recognized this right of a particular school board,²² reasoned:

Can the Board of School Directors of any parish represent the State in a like case without her authority? The plaintiff cites *School Directors v. Anderson*, 28 Ann. 739 as conclusive, but it is against him. That suit was on the part of the Board for Carroll parish, and the court maintained the right on the ground that legislative authority had been expressly given, by a law on the subject which was restricted to Carroll parish, Sess. Acts 1861, p. 93, though we are inclined to think if the language of that Act had been scrutinized, it would have been found deficient for that purpose.²³

²⁰Ibid.

²¹*Robert A. Hunter, State Treasurer, v. Robert W. Williams et als.*, (1861) 16 La. Ann. 129.

²²*School Directors, etc., v. R. K. Anderson, Administrator, et al.*, (1876) 28 La. Ann. 739.

²³*Board of School Directors of Concordia v. Albert G. Ober*, (1880) 32 La. Ann. 419.

With reference to the state's safeguarding this power of trustee he added:

The title to this land has never been in the parish Board of School Directors. The title was in the State under the donation of the general government, and she held it for a specific purpose, with authority to sell the lands, and a mandate to hold the proceeds and invest them for the benefit of the schools. No doubt she could confer authority on the parish Boards of Directors to sue in her stead, but she has not done it. On the contrary the State has seemed very tenacious of this power, and we think rightly, considering the position of trustee in which she stands to this fund. Never has she by a general act given the parish Boards the power to sue in such case in their names.²⁴

Consequently, the court ruled that the board of school directors of a parish is without authority to bring suit for the reversion of school lands unless empowered to do so by a legislative act. Thus, to the state the power of trustee has been reserved.

By Act No. 158 of 1910 the state transferred to the parish school board part of its power to stand in judgment concerning school lands as follows:

That the several school boards of the various parishes of this state be and they are hereby authorized and empowered to contract with and employ on the part of the state of Louisiana, attorneys at law, to recover for the state, damages for trespass to the sixteenth section known as school lands the title to which is still in the state, each of said boards to have authority, to make said contracts for the lands situated in its own parish and no others; and the several school boards shall also have authority to sue for and recover the sixteenth section known as school lands.²⁵

²⁴Ibid., pp. 419-420.

²⁵Acts of Louisiana, 1910, No. 158, sec. 1.

but reserved that:

Suit in all such cases shall be brought in the name of the state of Louisiana, and the attorneys, employed as aforesaid, shall sue for the value of all timber cut and removed from any such lands, as well as any and all other legal damages caused by any such trespass.²⁶

In 1915 the court interpreted this latter act to the effect that the board of directors was without authority to bring suit to recover school lands in its own name. In the case in reference the board of directors of the public schools of the parish of Orleans brought suit against the New Orleans Land Company²⁷ to recover fractional section sixteen, as belonging to the public schools of said parish. This suit was filed prior to the passage of the act of 1910. Judgment was obtained in the trial court and in the first hearing of the supreme court, but on application for rehearing the judgments were set aside with the following explanation:

Hence it appears that, since the present suit was filed, the state has by the Act No. 158 of 1910, given to the parish boards of school directors authority to employ attorneys and to sue for and recover the sixteenth sections to which the state has not legally parted with its title, and to recover damages for trespass on sixteenth sections. But the Legislature was careful to provide that the attorneys are to be employed on the part of the state of Louisiana; that damages for trespass on the sixteenth sections, the title to which is still in the state, are to be recovered for the state; that the suit, in all such cases, shall be brought in the name of the state of Louisiana; and that whatever sums are recovered in such suits shall be paid into the state treasury, to be credited by the auditor and treasurer to the town-

²⁶ Ibid., sec. 3.

²⁷ Board of Directors of Public Schools of Parish of Orleans v. New Orleans Land Co., (1915) 138 La. 32, 70 So. 27.

ship in which the land is situated, in the same manner as theretofore provided by law for the proceeds of the sale of sixteenth sections.

The plaintiff had no authority or right of action to sue to recover a school section or sixteenth section of land when this suit was filed, that is, before the passage of the act of 1910; and, under the terms of that statute, the plaintiff has authority now to bring the suit only in the name of the state of Louisiana.²⁸

When this suit came through the courts later under correct title of the state, recognition was given to it.²⁹

Also, the residents and alleged taxpayers in a township in whom is vested the title of the sixteenth section have the authority to stand in judgment, according to a decision handed down in 1892 when the residents of a sixteenth section in St. Tammany Parish were heard in a suit to annul an illegal sale of the section.³⁰

In various decisions the court has endorsed the trusteeship of the state and protected the schools' rights in their lands by decreeing certain transactions when pertaining to school lands as not permissible. In the case of *State v. New Orleans Land Company*³¹ several rulings pertaining thereto were handed down. Where an asylum for destitute orphan girls had transferred its lands to the drainage board and ultimately to the City of New Orleans, trustee of the drainage board, and some of which lands were sixteenth section, the court

²⁸Ibid., 138 La. 57-58.

²⁹*State v. New Orleans Land Co.*, (1918) 143 La. 858, 79 So. 515.

³⁰*Edwin Telle et al. v. The School Board of St. Tammany Parish et als.*, (1892) 44 La. Ann. 365, 10 So. 801.

³¹*State v. New Orleans Land Co.*, (1918) 143 La. 858, 79 So. 515.

said: "To our mind it is very plain that the asylum could not transfer the land of the state or of the public schools in payment of any debt it might owe, and that the fact that the debt was due in part for the drainage of this land could not make any difference."³² The defense argued also that although the land did belong to the schools, it was liable to the drainage assessment by Act No. 165 of 1858, creating the drainage board, but the court replied, ". . . we are very clear that the state's property and the property held by the state as trustee for the schools was not intended to be embraced in said act;"³³ and, "This state property could not have been seized and sold under said act of 1858, and still less could it be transferred by the asylum or by any other stranger to the title."³⁴ Concerning the diverting of the land from its trust purpose the court held plainly:

. . . for, until the decision of the Land Department awarding this land to the schools and rejecting the claim of the state to it shall have been set aside, the land must be held never to have belonged to the state, and hence to have never been subject to be alienated by her, either by direct deed or through the medium of an estoppel, as land belonging to her. And, of course, holding this land as trustee of the schools, she could not divert it from the schools, its trust purposes, and transfer it to the drainage board for drainage purposes; it could no more do that through the medium of an estoppel than by direct act of donation.³⁵

³²Ibid., 143 La. 863.

³³Ibid., p. 864.

³⁴Ibid.

³⁵Ibid., p. 867.

In answer to the defendant's plea of prescription acquirendi causa against the state, there was further protection in the decision:

Inherent in the state's title to such school land is a condition imposed by the act of Congress (Act Feb. 15, 1843, c. 33, 5 Stat. at L. p. 600) that the state cannot alienate same without the consent of the inhabitants of the township in which the land is situated. If, then, the state cannot alienate same by express statute to that effect without such consent, she is in no better position to do so by her laws of prescription acquirendi causa.³⁶

Thus, the court has upheld the policy that the lands reserved for the benefit of schools are under the trusteeship of the state or its legalized representative, are subject to exceptions pertaining to state property, and that this property must be dealt with only as legislation directs and as the judicial body of the state and of the nation interpret.

Legal methods of authorizing sales. The act of Congress donating the sixteenth section to each township for the maintenance of the schools provided that the sale of those sections be made only with the consent of the inhabitants of the township. Legislative acts administering that right required elections to be held to ascertain the will of the voters of the township, specifying that "Polls shall be open at the most public places in the township after advertisement of thirty days."³⁷ The definiteness of this was confirmed in St. Tammany Parish when the court annulled the sale of a

³⁶Ibid.

³⁷Edwin Telle et al. v. The School Board of St. Tammany Parish et als., (1892) 44 La. Ann. 369.

sixteenth section partly on the grounds that the advertisement was not made as required and that the election was not held.³⁸

Consistency in the policy relative to the sale of school lands is indicated by the frequent advice of the attorney general to the effect that no legal sale of the whole section or parts thereof may be consummated without the approval of the voters concerned.³⁹ This pertains also to a disposition for such purpose as a right of way--the accepted public land method of a grant by the governor and register of the state land office is not sufficient.⁴⁰ Elections for determining the will of the people should be conducted by the parish school boards and only legal voters should participate.⁴¹ However, when "the majority of the voters in a township give their consent and approval to the sale of such sixteenth section lands, . . . in case of the failure to sell the land when first offered for sale, the land may be again offered at public auction without another election."⁴² Similarly, this provision holds for the auctioning of timber.⁴³

These regulations do not pertain to those sections which are uninhabitable by reason of their being swamp or sea marsh or which for any other reason do not contain any

³⁸ Ibid., 44 La. Ann. 365, 10 So. 801.

³⁹ Opinions of the Attorney General of Louisiana: May 1, 1920, to May 1, 1922, p. 759; May 1, 1924, to May 1, 1926, p. 485; May 1, 1930, to April 30, 1932, p. 476.

⁴⁰ Ibid., May 1, 1922, to May 1, 1924, p. 673.

⁴¹ Ibid., May 1, 1916, to May 1, 1918, p. 446.

⁴² Ibid., May 1, 1906, to May 1, 1908, p. 288.

⁴³ Ibid., May 1, 1926, to April 30, 1928, p. 290.

legal voters. In these situations the school board is instructed to make proper application to the auditor of public accounts, who in his discretion may determine whether or not a sale should be made and authorized accordingly.⁴⁴

Purchase price less than appraised value not valid.

At first the minimum price at which the lands could be sold was fixed by the legislature at \$1.25 per acre. In 1857 additional provisions were made:

Be it further enacted, &c., That if a majority of the votes taken in a township shall give their assent to the sale of the lands aforesaid, it shall be appraised by three sworn appraisers selected by the Treasurer and Recorder of the parish; then they shall be sold by the Parish Treasurer at public auction, before the court-house door, or by the Sheriff, or an auctioneer to be employed by the Treasurer at his expense, to the highest bidder, in quantities not less than forty acres; but in no case at a less sum than one dollar and twenty-five cents per acre, . . .⁴⁵

The necessity for the appraised value to be received was established when the court set aside a sale, explaining:

Unless it were the intention of the Legislature that the land should not be sold for less than the appraised value, there would be no object in enacting that it should be appraised. Neither would there have been any reason for amending the Act of 1855, by requiring that it should be appraised.⁴⁶

The same ruling was handed down in 1892 when no title was declared to the adjudicatee of a sixteenth section which was

⁴⁴Ibid.: May 1, 1906, to May 1, 1908, p. 289; May 1, 1908, to May 1, 1910, p. 202; May 1, 1910, to May 1, 1912, p. 325.

⁴⁵Acts of Louisiana, 1857, No. 239, sec. 34.

⁴⁶School Directors, &c., v. Nicholas D. Coleman, (1859) 14 La. Ann. 186.

bought in 1887 at less than \$1.25 per acre.⁴⁷ However, this decision was criticized a few years later by the same court for not having taken cognizance of the revised statute of 1870, which superseded all previous acts and by which the "manner, terms, and conditions of the sale of school lands" were restated and no mention was made of a minimum price--only was the land to be appraised and sold to the highest bidder.⁴⁸ In the latter case the policy of sale at the appraisal price, regardless of the amount thereof, was upheld.⁴⁹

Recovery of lands. After the custom of selling school lands was fairly well established, a question which soon presented itself was: May a legitimate sale of school lands be dissolved or rescinded for cause and the lands recovered by a school board?

The court had occasion to answer this in the Hunter case.⁵⁰ There the defendants were in possession of school lands legally sold January 20, 1851, and secured by notes made to the state treasurer. In February, 1861, the plaintiff, state treasurer of that date, sued to demand payment of the notes, and in the event of non-payment, rescission of the

⁴⁷ Edwin Telle et al. v. The School Board of St. Tammany Parish et als., (1892) 44 La. Ann. 365, 10 So. 801.

⁴⁸ Acts of Louisiana, 1855, No. 321, sec. 34; Revised Statutes of Louisiana, 1870, sec. 1316; Acts of Louisiana, 1858, No. 267, sec. 2; Revised Statutes of Louisiana, 1870, sec. 2960.

⁴⁹ Board of Directors of Parish of Livingston v. Lanier et al., (1906) 117 La. 307, 41 So. 583.

⁵⁰ Robert A. Hunter, State Treasurer, v. Robert W. Williams et als., (1861) 16 La. Ann. 129.

sale. The court's order was that the sale be rescinded and that the said lands be restored by the defendants to the lawful authorities of the state for the benefit of the schools of the district to which they belonged.⁵¹ As settlement of another suit for dissolution of sale and recovery of rent because of defaulted payments⁵² the court decreed a restitutio in integrum--"The vendor returns the portion of the price paid, with interest from the date of payment, and the vendee returns the thing with its revenues."⁵³ To this point, there was judgment dissolving the sale and giving rent for the cultivated land at specified rates during different periods less certain amounts--cash payments with interest, and the cost of clearing land and making ditches and levees--leaving a balance of \$1,016.00 in favor of plaintiffs; also, it was ordered that plaintiffs recover rent on sixty acres of land at eight dollars per acre from 1875--the date of calculations by the lower court--to date of delivery to plaintiffs.⁵⁴

The state is estopped to recover school lands from professed owners who claim title through mesne conveyance by transfer recorded prior to the state's record of a judgment annulling the original sale and retroceding the land to the state. This was the substance of a decree rendered when the

⁵¹Ibid., p. 130.

⁵²School Directors, etc., v. R. K. Anderson, Administrator, et al., (1876) 28 La. Ann. 739.

⁵³Ibid., p. 741.

⁵⁴Ibid.

state sought to recover a sixteenth section after it had delayed fifty-eight years in recording a judgment which cancelled the original sale for want of failure to meet payments, and had placed of record a deed of conveyance, thereby converting the land into private property. Also, the state was held not entitled to collect the unpaid balance on the land when it had permitted more than ten years to expire before reinscribing the vendor's lien in the mortgage office.⁵⁵

Likewise, prescription runs against the state when it seeks action on notes for the deferred purchase price of school lands.⁵⁶ On the other hand, when the state brings action in due time the court recognizes the mortgage on the land and orders enforcement through the seizure and sale of the land to satisfy the matured notes outstanding.⁵⁷

After the state has sold a sixteenth section of land, it is estopped to recover that land through contesting the title of the owner on the grounds of illegalities or irregularities in the original sale. In this connection the state must conform to estoppel in the same manner as if it were a private individual, and the fact that it represents the interest of the inhabitants of the township in which the section is located does not affect the estoppel.⁵⁸

⁵⁵State ex rel. Board of School Directors v. Brooklyn Cooperage Co., (1930) 170 La. 531, 128 So. 470.

⁵⁶J. Graham, Auditor, v. G. W. & J. T. Tignor et al., (1871) 23 La. Ann. 570.

⁵⁷Meyer v. State, (1929) 168 La. 146, 121 So. 604.

⁵⁸The State of Louisiana v. Albert G. Ober, (1882) 34 La. Ann. 359.

After the state had all school land titles legalized in 1873 through an official acceptance of a survey of its lands by Surveyor General E. W. Foster,⁵⁹ efforts were made to recover sixteenth sections which had not been legally disposed of. Action to recover results merely in nonsuit when there is not satisfactory proof that the land in question was ever selected as school lands,⁶⁰ but with respect to definitely established claims the court has expressed, in no uncertain terms, the state's right to recovery as follows:

The laws of the United States are clear to the effect that every sixteenth section in place, or part of a sixteenth section in place, belongs to the state of Louisiana, for school purposes, and the parish school board having the administration of the schools and the property intended for their benefit are entitled to institute suits for recovery of such sections of land found in the possession of third persons.⁶¹

A very complicated suit of long duration and rehearings on this subject was the one brought against the New Orleans Land Company to recover a fractional section sixteen as belonging to the public schools of Orleans Parish.⁶² The land in question had come into possession of the defendant by various transfers and sales, some of which involved colonial

⁵⁹Meyer v. State, (1929) 168 La. 146, 121 So. 604.

⁶⁰Barton's Executrix v. Hempkin, (1841) 19 La. 508; Parish Board of School Directors v. Rosa B. Collins et al., (1881) 33 La. Ann. 424.

⁶¹Board of Directors of Public Schools of Parish of Orleans v. New Orleans Land Co., (1915) 138 La. 37.

⁶²Ibid., 138 La. 32, 70 So. 27; State v. New Orleans Land Co., (1918) 143 La. 858, 79 So. 515; State of Louisiana, Petitioner, v. New Orleans Land Company, (1918) 248 U. S. 577, 39 S. C. 18, 63 L. Ed. 429.

grants, but not any of which, according to the opinion of the case, were in keeping with the authorized sale of a sixteenth section at the time of the transfers. The court ruled, and the Supreme Court of the United States denied the petition for a writ of certiorari to the state court thereupon, that:

The said colonial grant and the titles following it extend, however, no further back than 40 arpents from Bayou St. John, and therefore embrace only a part of the land in dispute. As to the remainder, the defendant has no title, and has no standing for contesting in any way the title of the schools. To the extent of this remainder, therefore, the plaintiff is entitled to recover.⁶³

Thus, the state's right to recover school lands which had not been secured in a legal statutory manner was upheld, but her power to recover lands once secured through a colonial grant was denied.

Again, in 1921, it was maintained that the state's claim to sixteenth sections for the benefit of schools does not control where certain prior rights of title prevail. The claim of the state was denied with respect to land formerly owned by A. B. Roman and which was originally the Nicholas Verret colonial grant.⁶⁴ The court presented the conditions of this recovery thus:

The state cannot successfully claim a sixteenth section, or school section, in this township, if the Nicholas Verret grant was a complete grant when the United States acquired the Louisiana Territory, or if the claim of Nicholas Verret, was thereafter made valid by the act of Congress confirming the grant and the statute of this state relinquishing the state's claim.⁶⁵

⁶³State v. New Orleans Land Co., (1918) 143 La. 872-873.

⁶⁴State v. Bowie Lumber Co. (Rives et al., Warrantors), (1921) 148 La. 581, 87 So. 302.

⁶⁵Ibid., 148 La. 585.

A litigation testing Governor Roman's title had found its way to the Supreme Court of the United States.⁶⁶ With reference to the decree therein the court in the instant case said: "The decision therefore was nothing more nor less than a judicial declaration that Gov. Roman's title was complete and did not need a decree of any court to confirm it."⁶⁷ By an act of Congress⁶⁸ Governor Roman's title had been confirmed as far as claims of the United States were concerned and by statute⁶⁹ Louisiana had relinquished any claim she might have had to the land. The court's ruling was that the state's demand to recover be rejected.

Recovery by the state is not held when the only charge against the validity of the sale of the land is that it was according to statutory enactment but not as prescribed by the Congressional Act of February 15, 1843.⁷⁰

The legality of attorneys' fees to the amount of one-fourth of the land recovered was established when a transferee of the claims of the attorneys in the New Orleans Land Company case, supra, secured a ruling in favor of partition by licitation--one-fourth to the plaintiff and three-fourths to the

⁶⁶The United States, Appellants, v. Armand Pellerin et al. The United States, Appellants, v. A. B. Roman. The United States, Appellants, v. Carlos de Villemont's Heirs et al. The United States, Appellants, v. Jean B. Labranche's Heirs. (1851) 13 How. 8, 14, L. Ed. 28.

⁶⁷State v. Bowie Lumber Co. (Rives et al., Warrantors), (1921) 148 La. 593.

⁶⁸Acts of Congress 1853-54, "An Act for the Relief of A. B. Roman of Louisiana," ch. xcvi.

⁶⁹Acts of Louisiana, 1855, No. 114.

⁷⁰State of Louisiana, by School Board of Parish of Tangipahoa, v. William T. Joyce Co. et al., (1919) (Cir. Ct. of App.) 261 Fed. 128.

state.⁷¹ In answer to the state's attack that the acts under which the plaintiff sought relief were in conflict with the Congressional Act of 1843 the court said:

It is clear, therefore, regardless of anything that may have been said to the contrary in *State v. New Orleans Land Co.*, 143 La. 858, 70 So. 515, that a complete legal title vested in the State of Louisiana after the survey of 1871-72 and its official approval in 1873, and that the Act of Congress of February 15, 1843, was no legal impediment to the subsequent passage by the state Legislature of Acts 158 of 1910 and Act 184 of 1928, which are constitutional and valid.⁷²

Sale of timber. The courts have upheld the policy that the sale of timber on sixteenth section school lands is under similar jurisdiction to the sale of the land itself. Provisions for the latter were made in 1855 and 1858.⁷³ An interpretation of the effect of these statutes on the sale of timber was sought in a mandamus suit to compel the president of the school board to sign a deed conveying all the timber on a certain section to relator, pursuant to a resolution of said board selling the timber to the relator at private sale.⁷⁴ It was argued that the board had the right to gather the fruits of the soil by being in the position of a usufructuary, but the court said that no such right had been conferred by statute and that the board is merely an agent of the state, which holds the title in trust for the school district. In rendering decision the court sustained

⁷¹*Meyer v. State*, (1929) 188 La. 148, 121 So. 604.

⁷²*Ibid.*, 188 La. 153.

⁷³Acts of Louisiana: 1855, No. 321, secs. 32-35; 1858,, No. 267, sec. 2.

⁷⁴*State ex rel. Hopkins v. Stark*, (1904) 111 La. 594, 35 So. 760.

the refusal of the president to sign the instrument of sale, decreeing:

The sixteenth section cannot be sold without the approval of a majority of the legal voters of the township, and the sale must be at public auction. To hold that a parish school board has implied power to sell at private sale or otherwise all the timber on the section, constituting in this and other cases almost the entire value of the tract, would be to nullify the statutes.⁷⁵

Prior to the passage of Act No. 129 of 1908, which authorized the sale of the timber without the sale of the land, it was the policy of the legal advisers of the state to uphold the theory that the school lands and the timbers thereon were inseparable and that one could not be disposed of without the other.⁷⁶ The same policy of strict adherence to statutory provisions was followed in a case in 1912 when there was the decree that the attempted sale by a school board of the right to "cut and pull" the timber on a sixteenth section was absolutely and incurably null and conveyed no title whatsoever. In addition, the vendee was held to be a possessor in bad faith and liable to the state for the value of the manufactured product of the timber less the cost of logging and manufacture.⁷⁷ Very similar liability was demanded of another company which contracted with an unauthorized board, except it was specified

⁷⁵ State ex rel. Hopkins v. Stark, (1904) 111 La. 595.

⁷⁶ Opinions of the Attorney General of Louisiana: May 1, 1906, to May 1, 1908, pp. 255, 316; May 1, 1908, to May 1, 1910, p. 180.

⁷⁷ State v. F. B. Williams Cypress Co., Limited, (1912) 131 La. 62, 58 So. 1033.

that the value of the product would date to the time of removal of the timber.⁷⁸

Further interpretation of the act of 1908⁷⁹ has been rendered to the effect that "whatever may be said of the land in the school sections, the timber, apart from the land, could not, legally, have been sold without the consent of a majority of the legal voters, residing, not in the parish where the timber may be situated, but in the township, obtained at an election called for that purpose, . . ."⁸⁰ The power of the parish school board goes no further than to permit it to take the sense of the legal voters. When the vote is affirmative a report is made to the auditor, who authorizes the board to make the sale. The action of a parish treasurer in making such a sale and in deducting a commission therefor was held unauthorized and void.⁸¹

Actions for the recovery of the value of timber illegally cut from school lands are properly brought, under Act No. 158 of 1910, in the name of the state by the district attorneys of the respective parishes from which the timber was removed, assisted by special counsel employed by the respective boards of directors.⁸²

⁷⁸State v. Rathbone et al., (1919) 144 La. 835, 81 So. 334.

⁷⁹Acts of Louisiana, 1908, No. 129.

⁸⁰State v. Louisiana Cypress Lumber Co., (1919) 144 La. 570.

⁸¹Ibid., 144 La. 559, 80 So. 722.

⁸²Ibid.

Various statutes⁸³ have attempted to transfer to the parish school board the power to authorize the sale of timber on sixteenth sections. These have often been decreed unconstitutional, as being in conflict with the act of Congress providing that none of the sixteenth sections shall be sold without the consent of the inhabitants of the township concerned.⁸⁴ A change in the statutory provision to accord with legal opinion was made in 1922 and has been upheld thus:

Section 30 of Act 100 of 1922 is the last expression of the Legislature upon this subject. . . . It provides that all elections to authorize the sale of Sixteenth Section lands or of timber on Sixteenth Section lands shall be conducted by the Parish School Boards. It therefore follows, we think, that the timber upon a Sixteenth Section could not be sold until the inhabitants of the particular township in which the section is located have held an election and the majority authorize the sale thereof.⁸⁵

The state's legal advisers have agreed in maintaining that the funds derived from the sale of school lands shall be paid into the free school fund of the state treasury to the credit of the particular township,⁸⁶ but they seem to

⁸³Acts of Louisiana: 1916, No. 120, sec. 59; 1918, No. 142.

⁸⁴State ex rel. Hopkins v. Stark, (1904) 111 La. 594, 35 So. 760; State v. F. B. Williams Cypress Co., Limited, (1912) 131 La. 62, 58 So. 1033; Opinions of the Attorney General of Louisiana: May 1, 1918, to May 1, 1920, p. 732; May 1, 1920, to May 1, 1922, pp. 742, 745, 753; May 1, 1922, to May 1, 1924, pp. 665, 667; May 1, 1926, to April 30, 1928, p. 248.

⁸⁵Opinions of the Attorney General of Louisiana, May 1, 1928, to April 30, 1930, p. 515.

⁸⁶Ibid: June 1, 1912, to May 1, 1914, p. 594; May 1, 1920, to May 1, 1922, p. 737; May 1, 1924, to May 1, 1926, p. 425.

have differed⁸⁷ concerning the constitutionality of acts which sought to provide that the proceeds from the sale of timber should be credited to the account of the current school fund of the parish rather than to the free school fund. Much opinion has charged unconstitutionality, and most recent opinion,⁸⁸ as based on section 30 of Act No. 100 of 1922, holds that money from the sale of timber and of the land must continue to be deposited in the state treasury and placed at interest for the benefit of the particular township.

Lease. That the state has a right to lease its sixteenth section lands was evidenced in a case where a later board sought to dissolve a fifty-year lease of the fractional part of a sixteenth section which had been made by an earlier board in 1836 in conformity with the law. In rendering the decision, Justice Isaac T. Preston said:

The land is now in the possession of the defendants under that lease, and the plaintiffs, the present trustees, bring suit to recover it, and in effect, to annul the lease. They cannot do it. The State of Mississippi leased their school lands, acquired in the same manner for a term of ninety-nine years, and the Supreme Court of that State held the leases to be valid. The laws under which the defendants hold the lease, however unwise, expressly gave power to the trustees to lease the land for that term. They conflicted with no act of Congress, or the Constitution of the United States. The lessees acquired a vested right in the lease, by bidding for it at public auction, on the terms prescribed by the Legislature, and paying the price; and it would be a violation of our Constitution to deprive them of it.⁸⁹

⁸⁷ Ibid., May 1, 1920, to May 1, 1922, pp. 736-738.

⁸⁸ Ibid., May 1, 1924, to May 1, 1926, p. 425.

⁸⁹ Robert Garland et al. v. Thomas M. Jackson et al., (1852) 7 La. Ann. 69.

The decree was that there be judgment for the defendants. The legal counselors of the state have been consistent in maintaining the theory that the law granting the right to dispose of said lands through sales generally included the right to lease said school lands or to lease or sell the oil and mineral rights thereon.⁹⁰ The statutory provisions of 1922 with respect to leases have been upheld to this extent:

Section 30 of Act 100 of 1922 is the last expression of the Legislature upon this subject. It provides that Parish School Boards have authority to rent sixteenth section lands, or lease the mineral rights of same by a resolution of the Board and without the authority of a vote of the electors of the township in which such lands are located.⁹¹

Much controversy among the state's counsel seems to have arisen concerning which school fund should receive the money derived from lease of the land and of oil and mineral rights, and there does not seem to have been consistency of opinion that such income should be transferred to the current school fund of the parish rather than to the state free school fund.⁹² An opinion, based on section 30 of Act No. 100 of 1922, contends that these revenues are to go to the current school fund,⁹³ while a slightly more recent one holds that the proceeds from the lease of mineral rights can not be delegated constitutionally to the current school fund of the parish.⁹⁴

⁹⁰Opinions of the Attorney General of Louisiana: June 1, 1912, to May 1, 1914, p. 590; May 1, 1920, to May 1, 1922, p. 742; May 1, 1926, to April 30, 1928, p. 248.

⁹¹Ibid., May 1, 1928, to April 30, 1930, p. 515.

⁹²Ibid.: May 1, 1920, to May 1, 1922, p. 737; May 1, 1924, to May 1, 1926, p. 428.

⁹³Ibid., May 1, 1924, to May 1, 1926, p. 425.

⁹⁴Ibid., May 1, 1926, to April 30, 1928, p. 248.

Sixteenth Sections Which Are Not School Lands

Not all sixteenth sections are reserved as school lands. The discrimination thereof is founded on the type of survey which officially located them. In upholding the governmental surveys against an attack upon their authority and correctness, Justice Walter B. Somerville explained them and their relation to schools quite completely as follows:

The United States government has provided for two methods of surveying lands in Louisiana. One is known as the rectangular system of surveying, and is provided for by the Act of Congress of May 18, 1796, c. 29, 1 Stat. 464, which provides that each township shall be six miles square, subdivided into thirty-six sections, each one mile square. The sections are to be numbered respectively, beginning with No. 1, in the northeast corner, and proceeding west and east alternately through the township with progressive numbers, until 36 sections are surveyed.

If, in making this survey of the public lands in a township, a complete, or an approved, grant is found that overlaps a part of any section, the surveyor places this complete or approved grant on his map, and only the remainder of the section not covered by the grant is public land.

The other method of surveying the lands in Louisiana is the survey of lots or tracts along water courses, etc. The United States government, by the Act of March 3, 1811, c. 46, sec. 2, 2 Stats. 662, authorizes the public lands on water courses, etc., to be surveyed and subdivided into tracts of 58 poles in front and 465 poles in depth.

The Act of May 24, 1824, c. 141, 4 Stat. 34, authorizes the President to direct the survey of lands fronting rivers, water courses, etc., by lots, 2 acres front by 40 acres in depth.

The tracts surveyed along water courses in accordance with the acts of 1811 and 1824 are commonly known as "lots" or "radiating sections" or "fractional sections."

The Department of the Interior of the United States has ruled that sections 16 when they are "radiating sections" or "fractional sections" or "lots," as they are indiscriminately called, which front on water courses, do not belong to the state for the benefit of the township for school purposes, but that only the sections or parts of sections that are rectangularly surveyed and are "in place" belong to the state for school purposes.⁹⁵

The principle that fractional sections, radiating sections, or lots, number sixteen, were not the property of the schools was emphasized by the court in 1885 in the explanation:

This defense must fall before the fact that the lot in question (16) is a radiating, or anomalous, or irregular lot, not in place, and that the general laws consecrating lot or section 16 of townships to school purposes apply only to such lots as have been surveyed in square or rectangular lots or sections. Decision of Secretary of the Interior, July 23, 1860; of July 1, 1882; *Bartons vs. Hempkin*, 19 L. 510; (*Parish Board of School Directors v. Rollins*) 33 Ann. 424. See also 4 Ala., *Long vs. Brown*, pp. 622, 627, 628; 18 How. 173, 177, 178, 181, 182 (15 L. Ed. 338); *Cooper vs. Roberts*; *Public Domain* 1883, p. 227, indemnity selections; R. S. La. 2938; Sec. 14, Act 75 of 1880.⁹⁶

Lack of authority of state to sell fractional sections as school lands. Again, in 1905, the court interpreted that fractional sections are not school lands. The land to which the title was in contest⁹⁷ was alleged to have been secured by a sale made by the treasurer of the parish of Iberville under Act No. 250 of 1853, which provided for the reorganization of

⁹⁵Board of Directors of Public Schools of Parish of Orleans v. New Orleans Land Co., (1915) 138 La. 35-36.

⁹⁶*Joseph R. Bres v. M. Louviere et als.*, (1885) 37 La. Ann. 738.

⁹⁷*Lauve et al. v. Wilson*, (1905) 114 La. 699, 38 So. 522.

public school lands in the state. It was described as school section sixteen, but it was definitely established that it was a radiating or irregular section. The court's decree to the effect that the sale thereof as school lands carried no title was:

Fractional sections in fractional townships did not pass to the state under the general grant by Congress of sixteenth sections for school purposes, and the sale of such a section by a parish treasurer, professing to sell school land under the authority of Act No. 250, p. 213, of 1853, which authorized the sale of school land alone, conveyed no title.⁹⁸

Indemnity Lands

To assure equity in the school funds provided through the reservation of sixteenth sections "in place," Congress, by a revision of related previous legislation, enacted in December, 1873, that:

Where settlements, with a view to pre-emption, have been made before the survey of the lands in the field, which are found to have been made on sections sixteen or thirty-six, those sections shall be subject to the pre-emption claim of such settler; and if they, or either of them have been or shall be reserved or pledged for the use of schools or colleges in the State or Territory in which the lands lie, other lands of like quantity are appropriated in lieu of such as may be patented by pre-emptors; and other lands are also appropriated to compensate deficiencies for school purposes, where sections sixteen or thirty-six are fractional in quantity, or where one or both are wanting by reason of the township being fractional, or from any natural cause whatever.⁹⁹

⁹⁸Ibid., 114 La. 699.

⁹⁹Revised Statutes of the United States, 1873-74, sec. 2275.

Administration of indemnity lands and their proceeds.

In response to the Federal provisions the state declared:

The Register of the State Land Office is required to ascertain in what townships in this State there are no reservations of school sections by reason of conflicting claims, or from any other cause, or when the reservation is less than contemplated by law; and in such cases it is made his duty, under the superintendence of the Governor, to apply for and, as soon as possible, obtain a location of any land or parts of land in lieu thereof.

When such locations can not be made, if deemed more advantageous to the State, the Register, with the assent of the Federal government is authorized to issue scrip for such lands, which scrip shall not be sold for a less amount than \$1.25 per acre.¹⁰⁰

That the issuance of indemnity certificates by the state was legal and of common practice is shown in the McEnery case,¹⁰¹ where a mandamus was issued to compel the Governor and the Register of the State Land Office to execute and deliver to the relator patents for certain lands, some of which were indemnity lands. The relator by contract with a previous governor had recovered certain school indemnity lands and was entitled to fifty per centum thereof. In reply to the Register's complaint that the state held those lands only in trust, the court called attention to several well-considered opinions¹⁰² dealing with the legal destination of the title

¹⁰⁰ Revised Statutes of Louisiana, 1880, secs. 2951-2952.

¹⁰¹ The State ex rel. John McEnery v. Francis T. Nicholls, Governor, et al., (1890) 42 La. Ann. 209, 7 So. 738.

¹⁰² Board of School Directors of Concordia v. Albert G. Ober, (1880) 32 La. Ann. 417; Joseph R. Bres v. M. Louviere et als., (1885) 37 La. Ann. 736; Cullen McCastle v. J. J. B. Chaney et al., (1876) 28 La. Ann. 720; and James M. Cooper, Plaintiff in Error, v. Enoch C. Roberts, (1855) 18 How. 173, 15 L. Ed. 338.

to school indemnity lands and summarized therefrom:

The foregoing is deemed perfectly conclusive as to the legal title of such lands being in the State, with the right of sale, and of making perfect and complete titles to purchasers from her, and the right of dedicating the proceeds of sale to the inhabitants of such townships as may be entitled thereto.¹⁰³

As an expression of its views on the whole situation the court further said:

On account of the great public importance of the question involved and the stress laid upon it in the argument of the Attorney General, we have dealt with it as res nova and examined it most carefully and thoroughly, and our conclusion is that the statute is broad enough and sufficiently ample in terms to authorize the contract in this respect between the relator and the Governor; that the laws of Congress, and the prior statutes of the State authorized the recovery and selection of the indemnity school lands; that the right existed in, and the duty was imposed upon the State through appropriate legislative action, to make sale of them and dedicate the proceeds to school purposes; and that the authority in the Legislature to confer upon the Governor the power to convey a part of said lands, when recovered, to such person as should aid in their restoration to the State, is likewise ample.¹⁰⁴

The pertinent act in 1880¹⁰⁵ provided that the holder of indemnity warrants might locate his claim on any lands belonging to the state;¹⁰⁶ however, Act No. 103 of 1904 changed this method of satisfying claims of unlocated land warrants by providing for refunding to the holder of such

¹⁰³The State ex rel. John McEnery v. Francis T. Nicholls, Governor, et al., (1890) 42 La. Ann. 219.

¹⁰⁴Ibid.

¹⁰⁵Acts of Louisiana, 1880, No. 75, sec. 8.

¹⁰⁶Opinions of the Attorney General of Louisiana, May 1, 1918, to May 1, 1920, p. 572.

claims the original purchase price of the scrip.¹⁰⁷ This act seems to have been a solution for the adjudication of individual claims, but in some instances it appears that townships had not received their pro rata share of lieu lands. Act No. 123 of 1912 purposed to remedy this condition by authorizing the register of the state land office "when it is made to appear from the records of his office and such other evidence as he may require that a township has not received from the State the School Indemnity Lands to which it is entitled" to issue warrants in the name of the President of the School Board of the deficiency," which warrants may be located upon any vacant state lands subject to entry.¹⁰⁸

When these indemnity lands have been properly allocated to the townships entitled to them, it has been the policy to apply the laws governing the sixteenth sections in place to them,¹⁰⁹ except when special provisions were enacted, as is indicated by the following:

While it is true that the Act of Congress of May 20th, 1826, provided that school indemnity lands shall be held by the same tenure and upon the same terms as 16th section lands, this Statute, as well as other laws was superseded by sections 2275 and 2276, U. S. Revised Statutes, which latter placed no limitation on the State, but left it free to dispose of the lands according to appropriate legislation provided that the proceeds should be turned over to the schools in the township entitled to the indemnity.¹¹⁰

¹⁰⁷Ibid., p. 574.

¹⁰⁸Ibid., p. 581.

¹⁰⁹Ibid.: May 1, 1922, to May 1, 1924, p. 677; May 1, 1924, to May 1, 1926, p. 433.

¹¹⁰Ibid., May 1, 1924, to May 1, 1926, p. 438.

Thus, it may be seen that the principle of the legal standing of the state to administer indemnity lands and their proceeds, as based on Federal provisions, for the benefit of the schools in those townships entitled to such indemnity claims has been consistently followed.

Title to school land lost through use of indemnity scrip therefor. When the state accepts and sells indemnity scrip for a section of land or more in lieu of a fractional sixteenth section in place, the state loses its vested title to the school land in that township. This was declared true in 1914 when a plaintiff's vendor, who had secured a part of a sixteenth section through patent directly from the United States after the state had accepted and sold indemnity warrants for more than the 640 acres, had his ownership established by the court's conclusion "that the Department of the Interior, in passing upon the application of Thomas J. Hickman, decided correctly that the selection of additional school indemnity in excess of the area of section 16, T. 6 N. R. 3 W., was an acknowledgment on the part of the state that it had no title to the sixteenth section in that township."¹¹¹ The land in question at the date of issuance of patent belonged to the United States; consequently, the holder of the patent was declared as having a legal title, free from any school land claim thereon.¹¹²

¹¹¹Riggio v. McNeely et al., (1914) 135 La. 396.

¹¹²Ibid., 135 La. 391, 65 So. 552.

The Free School Fund

This fund was a natural consequence of the act of Congress which granted the sixteenth section of each township, or its equivalent, in the state as a permanent source of revenue for the public schools. Congressional provisions for the fund were:

That the Legislatures of Illinois, Arkansas, Louisiana, and Tennessee, be, and they are hereby, authorized to provide by law for the sale and conveyance in fee simple, all or any part of the lands heretofore reserved and appropriated by Congress for the use of schools within said States, and to invest the money arising from the sales thereof in some productive fund, the proceeds of which shall be forever applied, under the direction of said Legislatures, to the use and support of schools within the several townships and districts of country for which they were originally reserved and set apart, and for no other use or purpose whatever; . . . and in the apportionment of the proceeds of said fund, each township and district shall be entitled to such part thereof, and no more, as shall have accrued from the sum or sums of money arising from the sale of the school lands belonging to such township or district.

.

That if the proceeds accruing to any township or district from said fund, shall be insufficient for the support of schools therein, it shall be lawful for said Legislatures to invest the same in the most secure and productive manner, until the whole proceeds of the fund belonging to such township or district shall be adequate to the permanent maintenance and support of schools within the same:

. . . 113

¹¹³ Acts of Congress, 1842-43, "An Act to authorize the Legislatures of the States of Illinois, Arkansas, Louisiana, and Tennessee, to sell the lands heretofore appropriated for the use of schools in those States," ch. xxxiii, secs. 1-3.

The state's response was to make statutory provisions for the establishment and administration of a "Free School Fund."¹¹⁴ A supplementary act in 1857 provided for the ascertainment of the amount of the debt due the free school fund by the state and directed the issuance of bonds therefor in denominations of one thousand dollars. It declared such fund to be a perpetual trust of which the income only might be used.¹¹⁵ All the state's constitutions which have dealt with public education have sought to perpetuate this fund. In 1879 the debt was recognized to be \$1,130,867.51; the state promised to retain this as a perpetual trust and to pay thereon an annual rate of interest.¹¹⁶

Perpetuity of fund. The legislature passed, in 1872, an act which sought to abolish the free school fund and ordered the bonds composing it to be sold by the auditor and treasurer of the state.¹¹⁷ Protection of the schools from such disposition of the fund was maintained in a case in which the board of liquidation, provided for in the Funding Act of 1874 as amended the next year,¹¹⁸ was sued for the collection of three of the said bonds possessed by the plaintiff. Unconstitutionality of the act of sale was decreed by the court in 1877 as follows:

¹¹⁴Acts of Louisiana, 1855, No. 321, secs. 32-34, 36.

¹¹⁵Ibid., 1857, No. 182, secs. 1-2, 8.

¹¹⁶Constitution of Louisiana, 1879, art. 233.

¹¹⁷Acts of Louisiana, 1872, No. 81, secs. 3, 6.

¹¹⁸Ibid.: 1874, No. 3, secs. 1-2; Extra Session, 1875, No. 11, sec. 3.

In our opinion this act 81 of 1872 not only violates the act of Congress and the legislation thereunder and the constitution, but was an act of spoliation, intended and designed to deplete the treasury of every available asset or fund in it. These school bonds were supposed to be more salable than Auditor's warrants and certificates of indebtedness with which the state had been deluged; hence some device to get hold of them had to be concocted, and act 81 was the result. Some of these bonds were, it appears, not even negotiable; hence act 81 provides and directs that in such case the Auditor should indorse them with words to the effect that they were hereafter payable to bearer.

The interest of these school-fund bonds was pledged for the payment of the interest annually due to the several townships for school lands sold. The third section of act 81, directing the Auditor to annually estimate what would have been due to the free-school fund, if the same had not been abolished, and to levy and collect a tax to pay interest thereon, is not a compliance with the act of Congress, nor does it relieve the measure of the character we have already given it. We regard act 81 as violating the faith and solemn pledges of the State, that the State quoad those bonds was and is a mere trustee, and that the acts of Congress and the legislative action thereunder created obligations on the part of the State, in favor of the inhabitants of the various townships and other beneficiaries, which the State is not at liberty "to abolish" at its pleasure.

We therefore regard the sale of these "free-school bonds" held by the relator to be null and void, and that he acquired no title to them by virtue of the pretended sale under section six of said act 81.¹¹⁹

A year later the court upheld its policy of maintaining the perpetuity of the free school fund. The Louisiana National Bank had liquidated twenty-nine free school bonds sold to it under the act of 1872; the liquidation had been made mainly with a warrant which the state had issued the

¹¹⁹State of Louisiana ex rel. T. J. Durant v. The Board of Liquidators, (1877) 29 La. Ann. 81.

bank for a previous loan for levee protection. The bank applied to the board of liquidation to fund the bonds or to issue consols for the amount of the warrant representing the loan. The court upheld the board's refusal to fund the bonds, since their sale had been decreed a nullity, but ordered the board to fund the claim evidenced by the warrant, explaining that the state is justly entitled to the possession of the school bonds but that it could not keep the money loaned by refusing to meet the claim of the warrant.¹²⁰

Again, 1879, this policy of decreeing the unconstitutionality of destruction of the free school fund was followed; in this instance the auditor and the secretary of state, the lawful custodians of the fund, were authorized to demand that the bonds which had formerly been a portion of the fund be returned to the state.¹²¹

Disposition of interest accrued. Various provisions have specified that the proceeds of the free school fund are to be forever applied to the parishes in terms of the sections or parts of sections lying therein. The policy of accepting these proceeds as school funds to be used by the parishes was endorsed when there was judicial recognition of warrants which represented a portion of the interest on the free school fund, and which had been sold by one parish to replenish its

¹²⁰The Louisiana National Bank v. The Board of Liquidation, (1878) 30 La. Ann. 1356.

¹²¹Sun Mutual Insurance Company v. Board of Liquidation (Secretary of State and Auditor, Interveners), (1879) 31 La. Ann. 175.

school treasury.¹²² Also, the state's legal counselors have been consistent in advising that only the income from this fund may be used for school purposes.¹²³

That the interest on the free school fund is to be distributed to the parishes correctly, to the extent that mistakes after many years must be righted, if demand is made, was established in 1884. In the involved case one parish had received from the state for eight years annual payments of free school fund interest and had expended the majority of the total amount in the purchase of a lot and the construction of a schoolhouse. This course was pursued, although the recipient parish knew that the fund rightfully belonged to an adjoining parish where lay the township which the fund represented. The court ruled that the plaintiff parish was entitled to recover the money or the property to which it had been traced and which represented the fund.¹²⁴

SUMMARY

Prompted by the theory that education is a state function, Louisiana accepted in good faith the financial responsibility of her public schools. The lands set apart by

¹²² Ibid.; State of Louisiana ex rel. T. J. Durant v. The Board of Liquidators, (1877) 29 La. Ann. 77.

¹²³ Opinions of the Attorney General of Louisiana: June 1, 1912, to May 1, 1914, p. 594; May 1, 1924, to May 1, 1926, p. 428.

¹²⁴ School Board of East Carroll Parish v. School Board of Union Parish, (1884) 36 La. Ann. 806.

the Federal Government for the support of education in the state furnished one of the basic sources of public school revenue.

The dominant policies pursued in the administration of school lands and their proceeds appear to have been the following:

1. The theory of using public lands as a source of support for the state's educational system had its beginning with the Ordinance of 1787 which maintained that the dissemination of knowledge is necessary for good government and that the sixteenth sections of the public domain should be dedicated to the respective states for school purposes.

2. School lands were one of the earliest sources of support for public schools in Louisiana; an act of Congress in 1806 reserved in the Western District of the Territory of Orleans the sixteenth section of each township for the support of public schools therein.

3. In 1843 Congress authorized the Louisiana legislature to provide for the disposition of school lands. The Constitution of 1845 acknowledged this responsibility and made provisions whereby a permanent source of public school support was created.

4. According to the Federal Government provisions and the laws as interpreted by the courts, the state has been consistently declared the legal trustee in the administration of school lands and their proceeds.

5. The general policy has been that no school lands may be disposed of without the consent of the inhabitants of the township concerned. Special provisions govern those sections which are not inhabited. Regulations concerning the sale price of school lands have been determined by law; where the board of school directors fails to adhere thereto, the sale may be declared illegal.

6. School lands may be recovered when there is proof that the disposition was not according to the authorized method at the time of the transfer or when there is non-payment of notes therefor by the purchaser. Recovery, however, is subject to prescription and estoppel and to certain rights of priority of title through colonial grants.

7. In general, the disposition of timber on school lands and of the proceeds therefrom are governed by the same laws as the sale of the lands. Only since 1908 has there been legal sanction to the effect that timber could be disposed of separately from the land.

8. The school board of directors acting as an agent of the state may lease school lands, the income of which is delegated to the current school fund of the parish.

9. The topography of Louisiana has necessitated two types of official surveys; sections sixteen located by the rectangular survey--referred to as "in place"--are reserved for school purposes, but those surveyed along water courses--referred to as "lots" or "radiating sections" or "fractional sections"--do not belong to the state for the benefit of schools.

10. When as a result of conflicting claims or any other cause a township did not receive a sixteenth section or received only a part of it, indemnity lands were granted in lieu thereof and if such locations could not be made satisfactorily, there were provisions for the issuance of indemnity scrip with regulations governing its sale and redemption. The law governing sixteenth sections seems to have been applied to all types of lieu lands.

11. The free school fund was the natural result of the Congressional provisions which reserved the sixteenth section of each township for school purposes and specified that only the products from such lands or the interest on the proceeds of land sales might be allocated to the respective townships.

12. The perpetuity of the free school fund was assured by the courts of the state when an attempt by the legislature in 1872 to abolish the public school fund was declared unconstitutional. In 1879 there was constitutional recognition of the debt which the state was due to the free school fund. This specified amount was \$1,130,867.51, which the state promised to retain as a perpetual trust and on which it agreed to pay an annual rate of interest.

CHAPTER V

PUBLIC SCHOOL SUPPORT THROUGH GENERAL FUNDS

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Public taxation for the maintenance of public functions is one of the established rights of a state.¹ Since no public school system can be created and maintained without funds, and since the taxing of property is one of the chief sources of public revenues, any state may be expected to utilize the taxing power in its program of finances. This chapter proposes to present Louisiana's law in making provisions for the support of her public schools through the avenue of general funds.

THE SCHOOL FUND IN GENERAL

On the theory that a legislature may enact, for the general welfare of a state, any law which is neither in conflict with the Federal Constitution nor prohibited by the organic laws of the state, the Louisiana lawmakers proceeded to provide for the support of public education long before the constitution of the state made it mandatory. In Chapter III of this study it was shown that Louisiana accepted the theory of her responsibility to finance a program of public

¹Hermann H. Schroeder, Legal Opinion on the Public School as a State Institution (Bloomington, 1928), p. 56.

education. During early statehood money was appropriated for the construction of buildings and maintenance of schools and in many instances financial aid was given to private and parochial schools.² In 1833 the state was appropriating from \$2.50 to \$4.00 per month for each child enrolled in the various schools.³

Legal Foundations

In the Constitutional Convention of 1844-1845, G. Mayo, chairman of the education committee, pointed out the necessity of embodying the underlying principles of public school support in the organic law. He gave in support of his statement--"This State has for many years acted with a degree of liberality in making appropriations for the erection and support of colleges and academies, and for the education of indigent children"⁴--the fact that from 1812 to 1845 there had been spent by the state \$1,710,559.40 for the support of an unregulated school system. He further emphasized the need of state aid for free public schools and said that the above "facts are stated for no other purpose than to bring to view the disproportion in the expenditure, and

²Edwin W. Fay, The History of Education in Louisiana (Washington, 1898), pp. 63-67.

³Acts of Louisiana, 1833, "An Act supplementary to the several acts relative to Public Education," sec. 6, p. 143.

⁴Official Report of Debates in the Louisiana Convention, 1844-45, p. 316.

actual waste of public money for want of a well regulated system of education."⁵ Mayo contended that the state should not only establish public schools but should "provide means for that purpose and for their support."⁶ An effort was made to provide for the establishment of public schools without their being "free." One member opposed this by declaring that "in the word 'free' lay the whole gist of the matter"⁷ and adding that, if the proceeds of the public lands were insufficient to establish and maintain the schools, "he was fully willing that a tax of a half a million should be raised to sustain them."⁸ After considerable discussion as to whether the state should assume the obligation of maintaining a system of public education article 134 was adopted; this not only made it mandatory that free public schools be established, but directed the legislature to "provide means for their support by taxation on property or otherwise."⁹

In keeping with this constitutional mandate, the state and its parishes adopted by 1847 the policy of supporting public education. By that time a levy of one mill on the property in the state, the proceeds from school lands, and fines and forfeitures were being collected as the chief

⁵Ibid.

⁶Ibid., p. 319.

⁷Ibid., p. 906.

⁸Ibid.

⁹Constitution of Louisiana, 1845, art. 134.

educational funds and distributed to the various parishes of the state according to the educable children therein from six to sixteen years of age.¹⁰

The delegates in the Convention of 1852 accepted the policy of public school support by the state without protest. The significant amendment to the previous constitution was provision for the distribution of such funds to the effect that: ". . . all moneys so raised or provided, shall be distributed to each Parish in proportion to the number of free white children between such ages as shall be fixed by the General Assembly."¹¹

It is obvious that the Constitutional Convention of 1864 was affected by different theories pertaining to the maintenance of education. Some members advocated state support for schools to be established for colored children,¹² while others felt that all children, regardless of color, should attend the same tax-maintained schools.¹³ Some even thought that schools for colored children should be supported by taxes collected from colored people and that schools for white children should be supported by taxes collected from the property owned by white people.¹⁴ There was a strong

¹⁰Acts of Louisiana, 1847, No. 225, secs. 2-3.

¹¹Constitution of Louisiana, 1852, art. 136.

¹²Debates in the Convention for the Revision and Amendment of the Constitution of the State of Louisiana, 1864, pp. 72, 502.

¹³Ibid., pp. 494-502.

¹⁴Ibid., p. 523.

element which favored state aid for all private¹⁵ and parochial schools,¹⁶ while others regarded it the duty of the state to support only public schools.¹⁷ Notwithstanding the many controversial issues, the state refused to give financial aid to any educational institutions except public schools.¹⁸ As disposition of the question of support for schools for colored children, the legislature, in article 141, was directed to provide for the education of all youth "between the ages of six and eighteen years, by maintenance of free public schools by taxation or otherwise."¹⁹

Obviously, the Constitutional Convention of 1867-1868 was dominated by those who believed that schools maintained by public taxation should be open to all the children of all the people without color distinction. With the direction to the legislature to provide for the support of public schools, it was declared that, "There shall be no separate schools or institutions of learning, established exclusively for any race by the State of Louisiana" and no municipal corporation should violate even the spirit of the law.²⁰

¹⁵Ibid., pp. 72, 476.

¹⁶Ibid., pp. 476, 489-502.

¹⁷Ibid., pp. 477, 529.

¹⁸Constitution of Louisiana, 1864, art. 146.

¹⁹Ibid., art. 141.

²⁰Ibid., 1868, arts. 135-136.

The legislature in 1869 followed the policy of general support, as implied in the constitution adopted the year before, by raising the general state levy for public education from one to two mills.²¹

In 1879 a liberal attitude was again reflected in the organic law to the extent that there was provision for the support of free public schools for all children of the state between the ages of six and eighteen years.²² Another interesting feature of this convention was an attempt to interpret what was meant by the public school fund;²³ article 229 explained it to consist of:

1. The proceeds of taxation for school purposes, as provided in this Constitution.

2. The interest on the proceeds of all public lands heretofore granted by the United States for the use and support of public schools.

3. Of lands and other property which may hereafter be bequeathed, granted or donated to the State, or generally for school purposes.

4. All funds or property, other than unimproved lands, bequeathed or granted to the State, not designated for other purposes.

5. The proceeds of vacant estates falling under the law to the State of Louisiana.²⁴

Educational finance was not a controversial issue in the Constitutional Convention of 1898. Interest of the

²¹Acts of Louisiana, 1869, No. 121, sec. 57.

²²Constitution of Louisiana, 1879, art. 224.

²³Official Journal of the Proceedings of the Constitutional Convention of the State of Louisiana, 1879, pp. 173, 176-179, 189-192, 202, 228, 248-249, 301.

²⁴Constitution of Louisiana, 1879, art. 229.

people, however, was demonstrated by the presentation of a petition from the citizens of Rapides Parish which recommended more liberal provisions for the support of public schools by special taxes and suggested that citizens of local districts should be permitted to tax their own property for school purposes.²⁵ One significant change was that the legislature was directed to provide for the enumeration of educable children as a basis for the distribution of the general school fund as described above and to appropriate at least "one and one-quarter mills of the six mills tax levied and collected by the state" for the support of public schools.²⁶ This remained intact until an amendment in 1918 which increased the rate to one and one-half mills.²⁷

The Constitutional Convention of 1921 seemed to assume a liberal attitude toward the support of public education. Such attitude is reflected in a resolution introduced in the beginning of the convention which reads as follows:

Whereas, public institutions are of such vast importance in the regulation and perpetuation of civilization that no State can afford to neglect the importance of their support,

And whereas, that all such institutions as are provided for through the medium of taxation or other forceful means,

And whereas, the maintenance of all such institutions should be borne with equal ratio of burden on all taxable property of the State,

²⁵Official Journal of the Proceedings of the Constitutional Convention of the State of Louisiana, 1898, p. 52.

²⁶Constitution of Louisiana, 1898, art. 254.

²⁷Constitution of Louisiana, 1913, art. 254, as amended by Act No. 226 of 1918, adopted November, 1918.

And whereas, our present mode of taxation are (sic) unintentionally discriminate in character, placing as it does a greater burden on the taxable property of many subdivisions that is not necessary to be borne by others, to wit, Special Taxes,

And whereas, the intention of the following resolution is not so much to raise the school fund in the aggregate but to equalize the burden of responsibility,

Therefore, be it resolved, That this Convention adhere to democratic principles by inserting into our tax laws a clause providing for a five mill general fund school tax to be distributed equally between the parishes of the State in proportion to the educable children between the age of six and eighteen in the respective parishes.²⁸

This theory was put into practice in the embodiments of the organic law to the extent of the provision that the public school funds of the state shall consist of:

First, The proceeds of two and one-half mills of the taxes levied and collected by the State; provided, that out of the portion of said taxes collected in the city of New Orleans fifty thousand dollars (\$50,000.00) shall be paid annually to the Isaac Delgado Trade School.

Second, The proceeds of the poll tax, which shall be applied exclusively to the support of public schools in each parish in which collected, and shall be paid by the tax collector directly to the parish school board.

Third, The interest on the proceeds of lands heretofore or hereafter granted by the United States for school purposes, and the revenues derived from unsold portions thereof.

Fourth, All funds and the proceeds of lands and property, other than unimproved lands, heretofore or hereafter bequeathed, granted, or escheated to the State, not designated for any other purpose.

Fifth, Such other funds as the Legislature may appropriate.

²⁸Official Journal of the Proceedings of the Constitutional Convention of the State of Louisiana, 1921, pp. 93-94.

All school funds, except the poll tax and the interest on proceeds of lands granted by the United States for the support of public schools, shall be distributed to each parish in proportion to the number of children therein between the ages of six and eighteen years. The Legislature shall provide for the enumeration of educable children.²⁹

Levyng and Collecting the Regular School Tax

The parish treasurer as collector of state school fund. As some of the public school funds come from the state, it is necessary for an official to be charged with the responsibility of collecting said fund. Since the parish treasurer is the depository of the school fund due his parish, it appears that he might have the right to demand payment from the state in case of default. In 1857 a decision was handed down from the supreme court in which Judge H. M. Spofford, by quoting from the governing statute,³⁰ held: "The sums due to each of the parishes in this state from the annual collection of the school tax, shall be paid quarterly to the treasurer thereof, by the State Tax Collector."³¹ In response to the parish treasurer's request, the court ordered the state tax collector to pay not only the amount due the parish school fund, which was in arrears, but also 20 per cent upon the principal as a penalty from a stated date.³²

²⁹Constitution of Louisiana, 1921, art. 12, sec. 14.

³⁰Revised Statutes of Louisiana, 1856, "Free Public Schools," sec. 6, p. 191.

³¹J. B. Hendricks v. A. J. Bobo et al., Securities of Barham, (1857) 12 La. Ann. 620.

³²Ibid.

Provisions for local levies. The state's right to support public education through the general school fund does not preclude municipalities, parishes and school districts from contributing to the general fund for the benefit of their respective territories, when authorized by the legislature. In fact, the derivation of public school funds from local tax levies has long been an established principle in Louisiana.³³ Parish assistance was authorized by the act of 1870³⁴ which gave police juries the authority to levy a maximum of two mills in their respective parishes for school purposes. In 1879 local tax levies were given constitutional recognition in the provisions that "every parish may levy a tax for the public schools therein, which shall not exceed the State tax; provided that with such tax the whole amount of parish taxes shall not exceed the limits of parish taxation fixed by this Constitution."³⁵ Local levies for school purposes were optional with parishes and districts until 1888, when a law was enacted to the effect that police juries were required to appropriate annually as much as one and one-half mills of the parish assessment to the public schools.³⁶ Organic sanction of legislative authority to

³³Acts of Louisiana, 1820-21, "An Act to extend and improve the system of Public Education in the State of Louisiana," sec. 4, p. 64.

³⁴Ibid., Extra Session, 1870, No. 6, sec. 46.

³⁵Constitution of Louisiana, 1879, art. 229.

³⁶Acts of Louisiana, 1888, No. 81, sec. 54.

provide for local levies was continued in 1898,³⁷ and through the adoption of an amendment to the constitution in 1910 the police juries of the various parishes were required to levy and collect a three-mill tax annually for the use of schools in their respective parishes.³⁸ The Constitution of 1913 made no changes in the requirements,³⁹ but an amendment thereto in 1918 reduced the rate to one and one-half mills.⁴⁰ However, this reduction was of short duration, for the Constitution of 1921 put the rate back to three mills except where the parish school board might certify to the police jury that a smaller levy would be sufficient.⁴¹

Constitutionality of local levies. Whether or not the "Act to establish Free Public Schools in the State of Louisiana,"⁴² gave the district board of school directors a right to levy and collect local taxes for the benefit of the schools in its district was a question decided by the court in 1852.⁴³ The specific ground of attack against the levy so laid was that the practice was in violation of article 127 of the Constitution of 1845, which declares,

³⁷Constitution of Louisiana, 1898, art. 254.

³⁸Ibid., as amended by Act No. 257 of 1910, adopted November, 1910.

³⁹Constitution of Louisiana, 1913, art. 255.

⁴⁰Ibid., as amended by Act No. 218 of 1918, adopted November, 1918.

⁴¹Constitution of Louisiana, 1921, art. 12, sec. 15.

⁴²Acts of Louisiana, 1847, No. 225.

⁴³Villeneuve Bordelon et al. v. Thomas H. & W. B. Lewis, (1852) 8 La. Ann. 472.

"Taxation shall be equal and uniform throughout the State."

In arriving at the decree the court referred to several decisions which had involved the constitutionality of special taxes for purposes other than schools, but which involved the same principle as in the case at bar.⁴⁴ The following statement in the Lexington case was quoted as being equally applicable to Louisiana:

"Among these political ends and principles, equality, as far as practicable, and security of property against irresponsible power, are eminently conspicuous in our State constitution, but an exact equalization of the burden of taxation is unattainable and utopian."⁴⁵

In the Providence case the Supreme Court of the United States said:

"However absolute the right of an individual may be, it is still in the nature of that right, that it must bear a portion of the public burthens; and that portion must be determined by the legislature. The interest, wisdom and justice of the representative body, and its relations with its constituents, furnish the only security, where there is no express contract against unjust and excessive taxation; as well as against unwise legislation generally."⁴⁶

By a comparison with the Second Municipality case, there was the explanation that if the legislature had a right under the act here in contest "to delegeate the power of taxation to the City of New Orleans, or one of its municipalities,

⁴⁴The Providence Bank v. Alpheus Billings and Thomas G. Pittman, (1830) 4 Peters 514, 7 L. Ed. 939; City of Lexington v. McQuillan, (1839) 9 Dana 513, 35 Am. Dec. 159; The Second Municipality of New Orleans v. Duncan, (1847) 2 La. Ann. 182.

⁴⁵Villeneuve Bordelon et al. v. Thomas H. & W. B. Lewis, (1852) 8 La. Ann. 472.

⁴⁶Ibid., p. 473.

to promote public education, as we have already determined, there is no good reason why the same power should not be delegated to school directors in the various parishes of the State."⁴⁷

To another ground of attack--that the tax was levied to liquidate the indebtedness of the board's predecessors in office--the court said:

"... if no tax was imposed by the former directors, and the people of the district have had the benefit of the schools, they are bound in conscience to pay those expenses for which a tax might have been imposed, and they have suffered no injury by the delay which has been given them. Laws should receive a reasonable interpretation."⁴⁸

Since no evidence was submitted to prove that the tax was equivalent to spoliation, or the unlawful appropriation of private property, the court advised that the only remedy the defendants had was the ballot box, if the conduct of the school directors was not in accord with their wishes. Hence, the constitutionality of local levies was upheld and there was recognized the legality of those which did not amount to spoliation.

The police jury's position in the levying of local taxes. According to the interpretation of the law by the supreme court the levying of a parish tax for school purposes was at one time optional with the police jury. When a school board sought a mandamus to compel the police jury to levy such a tax of one and one-half mills, under the provisions of section 54 of Act No. 81 of 1888, the court held the act to be permissive only, as follows:

⁴⁷Ibid.

⁴⁸Ibid.

. . . the section under consideration must be read as meaning that the police jurors of the several parishes, etc., are authorized to levy, etc., and cannot be viewed as imposing upon them absolutely, the duty or obligation to levy the tax.

It consequently follows that the term used is not mandatory, but permissive only, and that the propriety of the levy of the tax is merely optional with police juries, who, in their wisdom, may or not exercise the prerogative.⁴⁹

In another case, where a similar question was involved, the court held that the legislature cannot force a parish to levy a tax for school purposes, but that it may authorize it to do so, and that when such authorization is granted and the parish undertakes to levy and collect the tax, the constitutional limits must be observed.⁵⁰

In 1902 the legislature saw fit to amend the provisions on this subject to read, ". . . no police jury of any parish shall levy for the support of its schools less than one and one-quarter mills on the dollar of the assessed valuation of the property thereof."⁵¹ Both the attorney general⁵² and the supreme court⁵³ have referred to this enactment as being a mandatory charge to the police jury to levy the tax as specified.

⁴⁹The State ex rel. Parish Board of School Directors v. Police Jury, (1888) 40 La. Ann. 758.

⁵⁰The State ex rel. Board of Directors of Public Schools of New Orleans v. City of New Orleans, (1890) 42 La. Ann. 92, 7 So. 674.

⁵¹Acts of Louisiana, 1902, No. 214, sec. 63.

⁵²Opinions of the Attorney General of Louisiana, May 1, 1908, to May 1, 1908, p. 251.

⁵³Williams et al. v. Police Jury of Morehouse Parish, (1914) 135 La. 445, 65 So. 604.

The Constitution of 1898 had fixed the maximum limit of the levy by the police jury at six mills with the provision that the whole amount of parish taxes should not exceed the constitutional maximum.⁵⁴ After another change in the specification of the minimum amount, the court interpreted the police jury's duty in regard to the school levy in excess of the stated minimum as being discretionary:

The Constitution, as amended, agreeably to Joint Resolution No. 257 of 1910, p. 437, declares that the police juries shall devote the proceeds of "at least three mills of the annual tax which they are empowered to levy" to the support of the public schools, and, under other provisions of law, constitutional and statutory, they cannot devote more than 6 mills of such annual tax to that object. They may, however, levy special taxes in addition to the annual tax, upon being specially authorized. But whether they shall devote more than 3 mills of the annual tax to the schools is left to their discretion, subject to the condition that they are bound to provide for the expense necessary to the discharge of the functions of their parishes as political corporations; . . .⁵⁵

Opinions from the state's legal advisers have consistently maintained that the police juries in the various parishes are required to levy the minimum tax as provided in the constitution.⁵⁶ Thus, court decisions and opinions of the attorneys general have consistently upheld the policy that it is left to the discretion of the police jury to determine the amount of the annual parish levy to be used for schools as long as minimum and maximum limits are observed.

⁵⁴Constitution of Louisiana, 1898, art. 254.

⁵⁵Williams et al. v. Police Jury of Morehouse Parish, (1914) 135 La. 431-452.

⁵⁶Opinions of the Attorney General of Louisiana: May 1, 1910, to May 1, 1912, p. 187; May 1, 1918, to May 1, 1920, p. 787.

Essentiality of tax levy to be in budget. Since the passage of Act No. 27 of 1908 a valid tax levy by the police jury must be included in the regular budget.⁵⁷ A failure to conform to this statute was the principal issue pertaining to the school tax in a case entered in the courts in 1909 and which was subject to various remands and appeals.⁵⁸ The pertinent feature of these litigations was to determine if a three-mill school tax which had been assessed on the property of Livingston Parish by the police jury but not included in the regular budget could be legally collected by the tax collector. A tax of four mills had been budgeted but the subsequent amount levied was seven mills. In ruling on this question Chief Justice Joseph A. Breaux cited many decisions on different phases of the budget showing that a tax to be collectable must be definitely stated in the budget, or in a supplementary budget.⁵⁹ The statute under which the

⁵⁷Ibid., May 1, 1908, to May 1, 1910, p. 163.

⁵⁸Howcott v. Smart, State and Parish Tax Collector, et al., (1909) 125 La. 50, 51 So. 64; Ibid., (1911) 128 La. 130, 54 So. 586; Ibid., (1912) 130 La. 699, 58 So. 515; Ibid., (1913) 133 La. 681, 63 So. 281.

⁵⁹George K. Shotwell v. City of New Orleans et als., (1884) 36 La. Ann. 938, approved The Parish Board of School Directors v. The City of Shreveport, (1895) 47 La. Ann. 1310, 17 So. 823; State ex rel. Douglas v. Kennedy et al., (1908) 121 La. 757, 46 So. 796; Nathan Lorie v. Bennett Hitchcock, Tax Collector, et al., (1874) 26 La. Ann. 154; Isaac Levy v. E. B. Mentz, Sheriff, et als., (1871) 23 La. Ann. 261; Police Jury of Jefferson Parish v. F. J. LaBarre, (1877-1880) Man. Unrep. Cas. 110; The Parish of Lincoln v. J. G. Huey, (1878) 30 La. Ann. 1244; Swords, Sheriff, v. Daigle, (1902) 107 La. 510, 32 So. 94; Constant et al. v. Parish of East Carroll et al., (1901) 105 La. 286, 29 So. 728.

tax in question was imposed had not been adopted before the budget was advertised, but the court saw this as no reason for not including the amount in a supplemental budget, or for passing the additional levy over in silence. Responsibility of the parish was placed as follows:

. . . under the statute, the parish is responsible for this tax. It is a parish tax, and all such taxes should be budgeted. It is a part of the parochial affairs in charge of the police jury. If these three mills on the dollar can be left out of the budget entirely, then there are other amounts which may as well be left out.⁶⁰

The court's decree, as upheld by a rehearing on the final suit and as arrived at by parts in the various suits, declared the excess tax of three mills illegal and perpetually enjoined its collection. Thereby, it was definitely established that a levy must be included in the adopted budget to be legal. A similar view was handed down by the attorney general in 1923.⁶¹

Collection of minimum tax on all property in parish mandatory. The city of Monroe refused to levy, collect, and deliver to the school board of its parish three mills of the annual tax which it was empowered to levy.⁶² The court issued a mandamus to compel the city to turn over the amount in question, stating to the city that this was a debt imposed

⁶⁰Howcott v. Smart, State and Parish Tax Collector, et al., (1911) 128 La. 135.

⁶¹Opinions of the Attorney General of Louisiana, May 1, 1922, to May 1, 1924, p. 446.

⁶²State ex rel. Parish of Ouachita Board of School Directors v. City of Monroe et al., (1913) 132 La. 82, 60 So. 1025.

by the constitution and must be paid, even if doing so meant the closing of its own school for the lack of funds or that the city would have to cease as a municipality. Thereby, the court forced adherence to the constitution and endorsed support to the schools according to legal provisions, regardless of the consequences to the debtor.

Many opinions from the state's attorneys have supplemented the judicial decision by insisting that under the law all incorporated cities and towns which are exempt from the payment of parish taxes must levy, collect, and turn over to the parish school boards the minimum tax required to be levied in the parish for school purposes.⁶³

Necessity for proper and prompt delivery. The law governing the collection and delivery of parish taxes for school purposes provides, "The tax so collected shall be paid over by the collector of parish taxes to the Treasurer of the Parish Board of School Directors, and shall by them be apportioned, . . ."⁶⁴ In Jefferson Parish a situation arose which involved an interpretation of this statute. The police jury had levied for the years 1881 and 1882 a tax of two mills for school purposes. The tax was collected by the sheriff of the parish but instead of paying the funds to the treasurer of the parish school board, as the law directs, he

⁶³Opinions of the Attorney General of Louisiana: May 1, 1910, to May 1, 1912, pp. 275, 279; May 1, 1918, to May 1, 1920, p. 648; May 1, 1920, to May 1, 1922, p. 535.

⁶⁴Acts of Louisiana, Extra Session, 1877, No. 23, sec. 28.

paid them to the parish treasurer who held them and refused to pay them to the school board treasurer. Thereupon, mandamus was applied for to compel the parish treasurer to comply with the law.⁶⁵

In reply to the claim that the parish treasurer held the funds only as an agent of the police jury and could not pay them out except in compliance with their resolutions and warrants, the court held that this was generally correct but did not apply to funds which are assigned by law to the control and custody of other parish functionaries over which the police jury had no right of control. The court maintained:

If the tax collector, through misconception of the law or otherwise, has paid over these funds to a parish official different from the one designated by the law, the duty to pay over the funds to the latter passed, with the funds themselves, to the official so receiving, and is a proper subject of enforcement by mandamus.⁶⁶

A portion of the funds had previously been paid out under the direction of the police jury, and a mandamus was issued compelling the parish treasurer to pay the remainder in his possession to the parish school board. Thereby the jurisdiction of the school board treasurer as custodian of the school funds of his parish was definitely upheld.

It appears that the police jury has not only the right to levy a parish school tax, but that the taxes collected are to be paid by the treasurer of the police jury

⁶⁵The State of Louisiana ex rel. Gervais Leche, District Attorney, et al. v. George Geier, Treasurer of Jefferson Parish, Left Bank, et al., (1883) 35 La. Ann. 1148.

⁶⁶Ibid., p. 1149.

to the school board continuously as they come in. This policy was upheld when the court sustained the claims of a certain school board against the parish police jury.⁶⁷

Since the money for the unpaid balance of the budget--the claim presented--was practically all in the possession of the police jury and since the taxes collected for the use of the school board constituted a trust fund for which the police jury was liable, the court ordered that body to pay to the board of school directors the total sum demanded, with legal interest from judicial order until paid. Apparently, no other decision from the court was necessary to establish this principle, for all opinions from the attorneys general on this subject are of the same theory.⁶⁸ Thus, the interpretations of the law have definitely upheld that all local school taxes must be given into the custody of the parish school treasurer and that the police jury is liable for the school fund while it is in its possession and for prompt delivery of it to the school board.

Minor Sources of the General School Fund

Tax levies furnish the major part of the state and local school revenue but there are other sources that are herein considered minor but which furnish an appreciable amount of the revenue. Some of these sources have their

⁶⁷Board of School Directors of Iberia Parish v. Police Jury of Iberia Parish, (1909) 123 La. 416, 49 So. 5.

⁶⁸Opinions of the Attorney General of Louisiana, May 1, 1920, to May 1, 1922, p. 535.

origin in statutory enactment; others originated in the organic law. School lands and their proceeds, having been treated previously, are omitted from this group.

These minor revenues administered by the state include mainly the gasoline, severance, and malt tax. The gasoline tax⁶⁹ pays to the credit of the state board of education approximately one-half cent on every gallon of gasoline sold retail. The state severance tax is a tax placed on natural resources taken from the soil or water.⁷⁰ Certain fractional parts are distributed to the parishes from which the tax was collected, then the residue after distributions to certain prescribed funds have been made and the cost of free textbooks has been met is applied to the general school fund administered by the state.⁷¹ The malt tax was provided by statute;⁷² its proceeds are credited to the state board of education for discretionary distribution to parishes as a means of equalizing the cost of public school support.⁷³

Less important minor sources administered by the state are proceeds from vacant successions, the inheritance

⁶⁹Constitution of Louisiana, 1921, art. 6, sec. 22, as amended by Act No. 1 of 1930, Extra Session, adopted November, 1930.

⁷⁰Constitution of Louisiana, 1921, art. 10, sec. 21.

⁷¹Acts of Louisiana, 1928, No. 100, secs. 1-2.

⁷²Ibid., 1930, No. 34.

⁷³Ibid., secs. 12-13.

tax, and the revenue on tobacco. As authorized by organic law,⁷⁴ the state does not merely keep the money from vacant successions on deposit but uses it and must refund it through legislative appropriation if a rightful possessor claims it.⁷⁵ The entire revenue of the inheritance tax is allocated to the general school fund.⁷⁶ The tobacco tax, having been authorized for a period of four years only,⁷⁷ may be classified as a term tax. This was levied on all forms of tobacco at the rate of one cent on each ten cents or fractional part thereof of the retail price.⁷⁸ The constitutionality of this tax was tested and upheld.⁷⁹

Minor school revenues administered locally include the poll tax, a fractional part of the state severance tax, and various fines and forfeited bonds. The poll tax as a source of school revenue was embodied in the organic law in 1868, with the direction: "One half of the funds derived from the poll tax herein provided for shall be appropriated

⁷⁴Constitution of Louisiana, 1898, art. 254.

⁷⁵Opinions of the Attorney General of Louisiana, May, 1896, to May, 1898, p. 110.

⁷⁶Constitutions of Louisiana: 1898, art. 235; 1913, art. 235; Acts of Louisiana, 1904, No. 45, sec. 1; Opinions of the Attorney General of Louisiana: May 1, 1904, to May 1, 1908, p. 219; May 1, 1908, to May 1, 1910, p. 249.

⁷⁷Acts of Louisiana, 1926, No. 197, sec. 16.

⁷⁸Ibid., secs. 2, 7.

⁷⁹Lionel's Cigar Store et al. v. McFarland, Supervisor of Public Accounts, (1927) 162 La. 956, 111. So. 341.

exclusively to the support of the free public schools throughout the State, and the University of New Orleans."⁸⁰ However, by 1879 the people were willing to devote this source of revenue in its entirety to the public school fund, as is indicated by the organic provision:

The funds derived from the collection of the poll tax shall be applied exclusively to the maintenance of the public schools as organized under this Constitution, and shall be applied exclusively to the support of the public schools in the parish in which the same shall be collected, and shall be accounted for and paid by the collecting officers directly to the competent school authorities of each parish.⁸¹

To the parish from which the state severance tax is collected there is paid not less than one-fifth on oil or gas and one-third on sulphur of the amount collected, with the provision that specified maximums are to be recognized and that distributions are to be made quarterly.⁸² A severance tax collected in one parish must be paid to the police jury of that parish⁸³ and credited to the general school fund therein.⁸⁴ All fines and forfeited bonds in criminal cases must be turned over to the school board of the parish in which the offense occurred,⁸⁵ and no part is distributable to a municipal school

⁸⁰Constitution of Louisiana, 1868, art. 141.

⁸¹Ibid., 1879, art. 227.

⁸²Acts of Louisiana, 1926, No. 301.

⁸³Opinions of the Attorney General of Louisiana, May 1, 1932, to May 1, 1934, p. 785.

⁸⁴Ibid., May 1, 1932, to April 1, 1934, p. 788.

⁸⁵Acts of Louisiana, 1902, No. 214, sec. 64; Opinions of the Attorney General of Louisiana, May 1, 1914, to May 1, 1916, p. 366.

fund.⁸⁶ Another type of fines which goes into the local parish school fund is that levied for violations of state conservation laws.⁸⁷

By this enumeration it may be seen that the income from various minor sources constitutes a substantial part of both the state and local public school fund.

Disposition of the Public School Fund

Custodians of the school fund. As depositary of the school funds the parish treasurer is the guardian of all school funds paid in during his term of office,⁸⁸ and to this effect his sureties are bound. In the Clements case, the court handed down a decision which held the sureties responsible for the proper accounting of all school funds which had been handled by the parish treasurer regardless of whether his term of office had ended or of what disposition had been made by the board.⁸⁹

The statute which established the office of treasurer of the public school funds of the parish⁹⁰ made that officer custodian of the school funds with the power of

⁸⁶Opinions of the Attorney General of Louisiana: May 1, 1918, to May 1, 1920, p. 412; May 1, 1922, to May 1, 1924, p. 397.

⁸⁷Acts of Louisiana, 1912, No. 127; Opinions of the Attorney General of Louisiana: June 1, 1912, to May 1, 1914, p. 292; May 1, 1928, to April 30, 1930, p. 157.

⁸⁸Acts of Louisiana, 1869, No. 121, sec. 36.

⁸⁹John Clements, President of the Police Jury of the Parish of Rapides, v. Eugene R. Blossat et als., (1874) 26 La. Ann. 243.

⁹⁰Acts of Louisiana, Extra Session, 1870, No. 6, sec. 21.

disbursing them exclusively on the warrants of the board of school directors, to whom he must render account semi-annually or "as often as required." This was held in a litigation dealing with an indictment charge of embezzlement.⁹¹ Therein the interpretation of "treasurer" was given by the court as follows: "The entrusting of school funds to him 'as treasurer of the school funds' was necessarily an entrusting for the purpose of 'safe keeping or disbursement,' because, under the law, they could have been entrusted to him, as treasurer, for no other purpose."⁹²

The parish treasurer is custodian of the funds of the school board to the extent that his failure to account for the funds on demand classifies him as guilty of embezzlement, regardless of the source of the money. When a treasurer of Winn Parish was convicted of embezzlement of the school funds, he was sentenced to pay a fine equal to the amount embezzled and to be confined at hard labor in the penitentiary for five years.⁹³

By section 65 of Act No. 232 of 1908, the parish superintendent of schools became in each parish (except the parish of Orleans) the treasurer of school funds and thus custodian thereof, as was held in an embezzlement suit in 1926. Money entrusted to this officer as parish superin-

⁹¹The State of Louisiana v. W. F. Eames, (1887) 39 La. Ann. 986, 3 So. 93.

⁹²Ibid., 39 La. Ann. 989.

⁹³State v. Mathis, (1901) 106 La. 263, 30 So. 834.

tendent is entrusted to him as treasurer under the responsibility and duty defined by statute.⁹⁴

Thus, regardless of what officer is custodian of the school funds, he must account for those funds according to the governing statute at the expense of punishment for embezzlement in case of failure in this respect.

Adherence to legal regulations required. Parish school boards are compelled to dispose of the funds entrusted to them as directed by the law. In answer to a claimant who sued the president of a school board for the collection of a warrant practically seven years old,⁹⁵ Judge W. G. Wyly reasoned as follows:

We do not see any cause of action against the defendant. He never employed the plaintiff to teach the public school he claims to have taught in the parish of Assumption in the years 1862, 1863, and 1864, for which the warrant was given, and the corporation of which he is president was not then in existence. Nor is it the successor of the school board which existed in that parish prior to the Constitution of 1868. It is well settled that the powers of corporations of this character extend no further than the provisions of the act creating them. Act No. 6, approved sixteenth of March, 1870, and act No. 8, approved twenty-fifth of February, 1871, which created the present public school system, will be searched in vain to find any authority conferred on the defendant to settle claims of the kind declared on by the plaintiff. It is made no part of his duty to pay the outstanding liabilities of former school directors, or any claims held by teachers prior to the acts of 1870 and 1871. On the contrary, the law in express terms provides that all such claims "shall be examined by the State

⁹⁴State v. Price, (1926) 161 La. 686, 109 So. 388.

⁹⁵F. G. Offut v. A. J. Acheverra, President of the Board of School Directors, Parish of Assumption, (1872) 24 La. Ann. 93.

Board of Public Education and referred by them to the next General Assembly." Section 31, Act No. 6 of extra session of 1870.⁹⁶

The judicial conclusion was: "The school board ought not to be compelled to apply the money confided to it to any other purpose than that directed by law, and this court will not require it to be done."⁹⁷

The treasurer of the school board must render account for all school funds expended by him and his account is acceptable only to the extent that it adheres to the legal regulations in effect at the time. When one treasurer sought to account for an expenditure by claiming that it had been applied to a debt of the school board, although there had been drawn no warrant by the president of the school board for such expenditure, his explanation was held to be insufficient account and judgment for the amount was rendered against him and his surety. However, it was provided that the treasurer would be allowed to bring action in a different proceeding to claim this amount. The court held that the school board, not the treasurer, was to determine what application should be made of funds.⁹⁸

This adherence has been consistently advised. In 1910 the Luchini case⁹⁹ apparently showed that the school board and the police jury of Caddo Parish had mutually agreed

⁹⁶Ibid., pp. 93-94.

⁹⁷Ibid., p. 94.

⁹⁸Charles N. Kaler, President, et al. v. Abraham Millspaugh et al., (1880) 32 La. Ann. 901.

⁹⁹Luchini et al. v. Police Jury et al., (1910) 126 La. 972, 53 So. 68.

that the former body would pay out of the school funds the rewards for convicted violators of the prohibition law, since the money collected from the fines was to be turned over to the common school fund. Chief Justice Breaux pointed out that school boards act under delegated powers and that the statute¹⁰⁰ providing this source of revenue required the money to be expended for educational purposes only.

The seven-mill tax for schools in Orleans Parish is divided into two separate funds: the one, derived from five and one-fourth mills, is for any use in aid of the public schools; the other, derived from the remaining one and three-fourths mills, must be used exclusively for "purchasing, constructing, repairing, and maintaining buildings for public school purposes."¹⁰¹ When the school board attempted to pay janitors' salaries from the levy of one and three-fourths mills, the court decreed the work of the janitors not sufficiently "maintenance" to warrant payment of their salaries out of a fund constitutionally provided for "maintenance," which term means holding, keeping, or preserving the buildings in their existing state or condition.¹⁰²

The attorneys general, in handing down opinions on this subject, have brought practically to date the interpretation that the disposition of the public school fund must

¹⁰⁰Acts of Louisiana, 1902, No. 214, sec. 64.

¹⁰¹Constitution of Louisiana, 1921, art. 12, sec. 16.

¹⁰²Orleans Parish School Board v. Murphy, Commissioner of Public Finance, (1924) 156 La. 925, 101 So. 268.

not permit of diversion and must be according to controlling statutory law.¹⁰³

Apportionment of school funds. From an early date the policy of the court seems to have been to adhere to strict interpretation of the governing law regarding the apportionment of school funds, not only in the initial distributions, but to the extent of making corrections of mistakes, where possible. One illustration of this was the reduction of the share of Orleans Parish in one distribution by the excess amount which it had received in a previous distribution, through a mistake in the treasurer's announcement of the sum to be distributed by the state. The parish complained of this action of the state superintendent of education but the court's answer was rejection of the plea.¹⁰⁴ Another illustration of the same principle, but opposite circumstances, was the judicial order that St. Landry Parish, which had received less per capita in one year than its pro rata share, be paid the lacking amount from the balance on hand for that year or, if necessary, from the revenues of succeeding years--the amount to be obtained by deducting on a pro rata basis from the shares of those parishes which had received an excess when the parish of St. Landry received a deficient amount.¹⁰⁵ A similar

¹⁰³Opinions of the Attorney General of Louisiana: May 1, 1916, to May 1, 1918, p. 435; May 1, 1918, to May 1, 1920, p. 638; May 1, 1920, to May 1, 1922, p. 522; May 1, 1922, to May 1, 1924, p. 422; May 1, 1924, to May 1, 1926, p. 204.

¹⁰⁴The State ex rel. The Board of School Directors of the Parish of Orleans v. Edwin H. Fay, Superintendent of Public Education, (1884) 36 La. Ann. 241.

¹⁰⁵Andrus et al. v. Board of Directors of Parish of St. Landry, (1902) 108 La. 386, 32 So. 420.

principle of corrections in apportionment has been upheld by the attorney general.¹⁰⁶

The right of precedence pertaining to central or high schools in apportionment was upheld in the Andrus case, supra, in the legal denial of the claim that all the funds should be used for the support of the district schools. In theorizing on the possibilities of distribution on the pleaded basis, the court maintained that if:

. . . it be held that the central or high schools, as well as the district schools, must depend for their support upon the proportion of the school fund allotted to the particular districts in which they are established, the results, as it seems to us, will be that the children in the less populous districts will be denied the advantages of the high-school education which it is the idea of the law to place within the possible reach of all the children of the parish, and, instead of being able to establish such schools when or where "necessary," the boards will be able to establish them only in populous and comparatively wealthy districts. We take it, therefore, that the law is to be construed as though it read:

"The parish boards shall distribute the school funds to the several districts in the parishes in proportion to the number of persons in such districts between the ages of six and eighteen years: provided, said boards, with the sanction of the state board of education, and when suitable sites and buildings have been otherwise furnished, may establish such central, or high, schools as may be necessary, and, for their maintenance, may draw upon the general school funds before apportioning the same to the several school districts."¹⁰⁷

The gradual change in the policy of statutory provisions for the apportionment of the parish school funds was

¹⁰⁶Opinions of the Attorney General of Louisiana, May 1, 1910, to May 1, 1912, p. 380.

¹⁰⁷Andrus et al. v. Board of Directors of Parish of St. Landry, (1902) 108 La. 393.

traced in the Martin case¹⁰⁸ of 1910. The claim therein was for a shortage because the parish school funds had not been distributed in proportion to the number of children of school age, as required by section 7 of Act No. 81 of 1888. In tracing the changes in the various statutes providing for a system of public schools, the court showed that the provision for apportionment according to the number of school children in the several districts, as included in the act of 1888, was repealed by implication through omission thereof in Acts Nos. 214 of 1902, 167 of 1904, and 49 of 1908. In the act of 1902 there was express repeal, since it contained provision for repealing all laws in conflict with itself, and the provision of the 1888 act was definitely in conflict. Where the early statute provided for apportionment according to the number of children in the various districts, the later statute made it obligatory upon the parish school board "to determine the number of schools to be opened, the location of the school-houses, the number of teachers to be employed, and their salaries."¹⁰⁹ The weakness and unfairness of the 1888 statute was pointed to as follows:

. . . it deprived the local authorities of a very necessary discretion in the apportionment of the school funds as between the races, with the result that in some parishes the colored children received the bulk of the school funds, although the whole of said funds, practically, had been contributed by the parents of the white children; and that it

¹⁰⁸State ex rel. Martin et al. v. Webster Parish School Board, (1910) 126 La. 392, 52 So. 553.

¹⁰⁹Acts of Louisiana, 1902, No. 214, sec. 8.

also had the effect of making it impracticable to maintain schools in the sparsely settled parts of the country.¹¹⁰

The court held that a "discretionary control of the school funds is absolutely necessary, because schools cannot be established and maintained without funds. Discretionary control of the one necessarily carries with it discretionary control of the other."¹¹¹ The same policy was reflected in Act No. 214 of 1912, which granted the school board discretionary powers in the apportionment of the general school funds.¹¹²

According to the interpretations which attorneys general have placed upon later legislation--section 9 of Act No. 120 of 1916,¹¹³ and section 21 of Act No. 100 of 1922--¹¹⁴ the lawmakers seemed to have changed the policy of apportionment from that of leaving the basis of distribution to the discretion of the parish board of school directors to that of specifying that there shall be distribution so as to provide equal sessions for all schools in the parish. In the latter act it was provided that:

No special advantage shall be given out of the General School Funds to the High Schools . . . Communities desiring better facilities and longer sessions than can be provided by a distribution

¹¹⁰State ex rel. Martin et al. v. Webster Parish School Board, (1910) 126 La. 397.

¹¹¹Ibid.

¹¹²Opinions of the Attorney General of Louisiana, June 1, 1912, to May 1, 1914, p. 351.

¹¹³Ibid., May 1, 1916, to May 1, 1918, p. 417.

¹¹⁴Ibid.; May 1, 1924, to May 1, 1926, pp. 204, 469; May 1, 1928, to April 30, 1930, p. 543; May 1, 1932, to April 1, 1934, p. 315.

of the general funds giving equal sessions to all schools shall secure same by voting special taxes or obtaining funds from other sources than the current or general funds.¹¹⁵

Disbursement of unwarranted tax already collected.

An unusual case which involved the disposition of taxes illegally collected was before the courts in 1895.¹¹⁶ The municipal corporation of Shreveport had levied and collected annually a tax for school purposes, even to the extent of placing such tax in the budget and having partially disbursed it accordingly. Subsequently, the city declined to make further disbursements to the school board on the ground that the authority for the tax was not included in the city charter. The plaintiff alleged that since the tax had actually been levied and collected, the schools should benefit therefrom. In rendering the decision the court reasoned as follows:

It may be conceded for the argument that the city was altogether without authority to levy or collect the tax in question; but having already levied and collected it, the plaintiff has undoubtedly the right to institute suit for its recovery for school purposes. Forsooth, a tax that has been illegally or unwarrantably collected does not confer on the municipality the right to appropriate and use the fund collected at will.

.

In our conception it is of no consequence that the city charter conferred no such authority to levy and collect the tax. The taxes have been collected. The people have paid them without objection. The authority to tax is an accomplished

¹¹⁵Acts of Louisiana, 1922, No. 100, sec. 21.

¹¹⁶The Parish Board of School Directors v. City of Shreveport, (1895) 47 La. Ann. 21, 16 So. 563.

fact. The funds are in the treasury and already destined to school purposes. This fund is a quasi-trust in defendant's hands, for the use and benefit of the plaintiff.¹¹⁷

The disposition of the suit was that it was remanded for trial. Again it came to the supreme court.¹¹⁸ An added defense by the defendant was that of prescription, but the court held that prescription would not protect the corporation in such liability. The claim was for the budgeted amounts from 1881 to 1891; evidence showed that the amounts for 1884, 1886, and 1891 had been paid in full to the school board and this deduction was made by the court. Otherwise, the first decree was controlling--that is, when a municipality has collected money from its taxpayers to meet a budget, the amount is a trust fund and the municipal corporation will be liable for any diversion from application to the purposes specified.¹¹⁹

Proper issuance of warrants requirement for validity.

Several times has the court been requested to interpret concerning the law on disbursement by warrants, and in every instance payment of warrants in any way or by any authority other than that prescribed by law rendered the transaction void. Very early in the supreme court's history¹²⁰ treasurers

¹¹⁷Ibid., 47 La. Ann. 24.

¹¹⁸The Parish Board of School Directors v. The City of Shreveport, (1895) 47 La. Ann. 1310, 17 So. 823.

¹¹⁹Ibid.

¹²⁰State ex rel. I. Newman v. R. M. Lusher, Superintendent of Public Schools, (1877-1880) Man. Unrep. Cas. 189.

of the parish boards of school directors were prohibited from pledging the school funds or warrants for a loan of money without proper authorization from the board of school directors, for, according to the decree, the governing statute so regulated, and such warrants were not commercial paper.

The same point was at issue in 1902,¹²¹ and again the court said the methods of disbursement prescribed by statute must be followed. The governing act¹²² at that time provided that the treasurer shall pay out the school funds only on warrants drawn by the president and countersigned by the secretary of the parish school board. Concerning a treasurer who had violated this law, the court reasoned: ". . . but why the treasurer should take it upon himself, and why he should be permitted, in the face of a direct and positive prohibition of law, to pay out thousands of dollars for which the board has issued no warrants, we are unable to understand."¹²³

The drawing of warrants except against cash actually in the treasury is prohibited. Therefore, warrants drawn by a police jury in April, June, and July for the proportion of the parish taxes devoted to the school fund must be considered as drawn against the proceeds of the taxes levied

¹²¹Andrus et al. v. Board of Directors of Parish of St. Landry, (1902) 108 La. 386, 32 So. 420.

¹²²Acts of Louisiana, 1888, No. 81, sec. 59.

¹²³Andrus et al. v. Board of Directors of Parish of St. Landry, (1902) 108 La. 394.

during the preceding year, for in those months the taxes of the current year are not even collectable, and much less collected.¹²⁴

The incurring and liquidation of debts. The amount of debt which may be incurred by parish boards was delimited by statute in 1888 as follows:

That the different boards of directors shall not be empowered to make contracts or debts for any one year greater than the amount of revenue provided for according to this act, it being the intent hereof that parties contracting with said board, shall take heed that due revenue shall have been provided to satisfy the claim, otherwise they may lose and forfeit the same, and no action or execution shall be allowed in aid thereof, and that the board shall not exceed their powers in incurring the debt.¹²⁵

Various interpretations of this provision were rendered in the Andrus case,¹²⁶ chief of which were that since the calendar year basis of budgeting afforded very little revenue early in the session, the borrowing of money to pay teachers' salaries was justifiable, and that in the financial records there must be a clear distinction between the funds of one year and those of another.

An attempt to readjust the financial basis satisfactorily was made in the 1922 act¹²⁷ which required schools

¹²⁴Farmerville State Bank v. Police Jury of Union Parish (Board of Directors of Public Schools, Interveners), (1916) 138 La. 835, 70 So. 852.

¹²⁵Acts of Louisiana, 1888, No. 81, sec. 73.

¹²⁶Andrus et al. v. Board of Directors of Parish of St. Landry, (1902) 108 La. 386, 32 So. 420.

¹²⁷Acts of Louisiana, 1922, No. 100, sec. 32.

to arrange their finances, so as to be on a fiscal year basis beginning July 1, 1928. The same act broadened the power of the school board in borrowing money--in cases of emergency, loans could be made in excess of the budget of probable revenue, if authorized by a two-thirds vote of the entire membership of the board.¹²⁸ The constitutionality of this act was upheld in a litigation occasioned by the attempt of one parish board to close certain schools for a session in order to adjust its finances to a fiscal year basis.¹²⁹ Also it was held that the board lacked authority to close the schools, even in case of emergency, but to the board the court pointed out the proper alternative in such cases--that is, the authorizing by a vote of two-thirds of its membership of loans in excess of its budget of probable revenues.

A similar policy of forbidding the borrowing of money in excess of the budget of probable revenues, except in case of emergency, has been upheld by the state's legal council.¹³⁰

The liquidation of general indebtedness legally incurred by a school board has been provided for by legislative enactment. The Constitution of 1921 made provisions for enabling the various subdivisions of the state, through

¹²⁸Ibid.

¹²⁹State ex rel. Day et al. v. Rapides Parish School Board, (1925) 158 La. 251, 103 So. 757.

¹³⁰Opinions of the Attorney General of Louisiana: May 1, 1928, to April 30, 1930, p. 504; May 1, 1932, to April 1, 1934, pp. 317-319.

the voting of refunding bonds, to pay or to extend their indebtedness, bonded and otherwise, existing prior to January 1, 1921, so as to place those bodies upon a sound financial basis.¹³¹ The legislature realized the need in 1928 of a similar provision to take care of the general indebtedness of subdivisions prior to January 1, 1929. Accordingly, it provided an enactment to the effect that:

. . . the parish police juries and school boards, and municipal corporations throughout the State, the City of New Orleans excepted, shall have the right and authority to dedicate, appropriate, and pledge not more than two (2) mills of the taxes respectively authorized to such police juries, school boards and municipal corporations by the Constitution and laws of the State of Louisiana, for a period not exceeding twenty-five (25) years, for the payment of any indebtedness, matured or unmatured, exclusive of bonded indebtedness, of such police juries, parish school boards, and municipal corporations, which may have been lawfully incurred prior to January 1, 1929.

That, for the purpose of evidencing such indebtedness, the governing authorities of such police juries, parish school boards and municipal corporations shall have the authority to issue to any creditor, his representative or transferee, a certificate or certificates of indebtedness for the amount of the debt due said creditor; provided, that two or more debts may be combined and a certificate or certificates issued for the whole. Such certificates shall be issued only when authorized by an ordinance or resolution, passed by the governing authority issuing them, and shall be secured by dedication, appropriation, and pledge of such portion of the taxes authorized respectively to such police juries, parish school boards, and municipal corporations by the Constitution and laws of the State of Louisiana, not exceeding two (2) mills, as may be provided by the governing authority . . . They shall bear such rate of interest, not exceeding six (6%) per cent. per annum, payable annually or semiannually, as may be fixed by said governing authority, shall run for a period not

¹³¹ Constitution of Louisiana, 1921, art. 14, sec. 14.

exceeding twenty-five (25) years, and shall be made payable at such times and places as may be determined by the governing authority.

Such certificates shall be executed and signed by the President and Secretary or Clerk of the police jury or school board, or by the Mayor, Secretary or Clerk of the municipal corporation, issuing the same, or other officials, whose positions correspond to those mentioned; . . .¹³²

The constitutionality of this act was the point of contest in a suit to compel a bank to accept such certificates of indebtedness in exchange for school board notes which it held, as per an agreement previous to the issuance of the certificates.¹³³ Chief of the attacks on the constitutionality of the legislative act were that it sought to change the date, as named in the constitution, prior to which lawfully incurred indebtedness may be funded, and to authorize the funding without an election. To these the court replied:

It would be most unreasonable to construe this section as a perpetual prohibition against the funding of the general indebtedness of the subdivisions of the state out of the alimony tax, except for debts existing prior to January 1, 1921, and then only upon observance of the conditions prescribed in said section. A special election is not necessary in such a case, as no special tax is to be voted or is needed. Nor is there any necessity for obtaining the consent of the taxpayer either to incur, or to pay out of an alimony tax, any indebtedness arising from the current expenses of a police jury, parish school board, or municipality.¹³⁴

¹³²Acts of Louisiana, Extra Session, 1928, No. 18, secs. 2-3.

¹³³Assumption Parish School Board v. Bank of Napoleonville, (1929) 168 La. 1118, 123 So. 802.

¹³⁴Ibid., 168 La. 1124-1125.

Thus, the court sanctioned the legislative provision for the liquidation of school debts and thereby held that it is sound public policy for police juries, parish school boards, and municipal corporations to fund into interest-bearing certificates their general indebtedness.

SUMMARY

The general school fund has been one of the chief sources of public school support and the policies which have governed its administration seem to be as follows:

1. Louisiana's belief in the support of education is evidenced by the fact that \$1,710,559.40 was spent for this purpose before the organic law made any provisions for a public school system.

2. After much contest the Constitutional Convention of 1845 accepted the principle of state support of free public schools; by 1847 the source of this support was a tax of one mill on all property and the proceeds from fines and forfeitures.

3. The Constitutional Conventions of 1864 and 1867-1868 reflected the influence of Congressional Reconstructionists in their provisions for the support of public education for all children regardless of color.

4. Since 1845 the state has adhered strictly to the policy of giving financial aid to public schools only.

5. The state seems to have assumed a liberal attitude toward the support of her public schools, as is indicated by the Constitution of 1921, which provided that the general school fund shall consist of: (a) the proceeds from an ad valorem tax of two and one-half mills levied and collected by the state; (b) the money derived from the poll tax; (c) the interest on the proceeds of school lands or the revenues derived from those which remain unsold; (d) proceeds of lands bequeathed or escheated to the state; and (e) any funds that the legislature may designate.

6. The school treasurer for the parish is empowered to collect whatever money is due the parish from the state.

7. The policy of the state has been to delegate a portion of the responsibility of public school support to local authorities. In 1870 the police juries were authorized to levy a maximum of two mills on all property in their respective parishes for the support of public schools. In 1879 local levies were given organic sanction, and since 1888 they have been compulsory.

8. The constitutionality of local levies has been consistently upheld by the courts; however, the levying must be in accord with the governing statute, and since 1908 a valid tax thus levied must be included in the budget.

9. Police juries not only have the right to levy and collect the minimum tax on all the property of their respective parishes, but also when such money is collected they must deliver it promptly to their respective parish school treasurers.

10. Appreciable support of public education is derived from minor sources. These sources administered by the state include the gasoline, severance, malt, inheritance, and tobacco (a term tax only) tax and proceeds from vacant successions. Such sources under local administration include the poll tax, a fractional part of the state severance tax, and various fines and forfeited bonds.

11. The parish school treasurer is custodian of the school fund and the courts have held him and his sureties responsible for his proper accounting of these public funds.

12. Parish school boards are required to adhere strictly to the governing law in their disposition of public school funds.

13. The policy of apportionment of school funds is that the distribution must be as specified by controlling legislation, even to the extent of correcting mistakes when a parish has received either more or less than its pro rata amount and of requiring disbursement when a tax has been collected though illegally levied.

14. No school funds may be distributed except through the issuance of warrants as directed by law.

15. The policy of the state has been to hold current educational expenses within the bounds of the current revenues. When money is borrowed, the amount must not exceed the anticipated revenues for the year except in cases of emergency--then by authority of a two-thirds vote of the entire board the amount may be greater.

16. The courts have upheld the legislative provision whereby local authorities may liquidate school debts by funding them into interest-bearing certificates.

CHAPTER VI

PUBLIC SCHOOL SUPPORT THROUGH SPECIAL FUNDS

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Local autonomy is one of the fundamental principles of the American Government. The levying of taxes by a state for the support of its public functions is a long established policy, but the delegation of the taxing power by the legislature to the people of a subdivision of the state is of more recent origin. In this chapter an attempt is made to show Louisiana's law of public school support through the various types of funds authorized by the taxpayers of the school district.

SCHOOL FUNDS AUTHORIZED BY TAXPAYERS

For more than a century Louisiana has theoretically legalized local autonomy in the support of public education.¹ This power, delegated by the legislature to the qualified electors of a school district, was reluctantly accepted by the people until after the War for Southern Independence. An illustration of this permissive legislation was the law of 1869 which gave the voters of each district the right to levy

¹Acts Passed at the First Session of the Second Legislature of the Territory of Orleans, 1808, "An Act to provide for the means of establishing public schools in the parishes of this Territory," ch. vii.

a maximum of three mills for public school expenses in general.² The next year this act was amended so as to permit school districts to levy by vote of the taxpayers a maximum of ten mills.³ The principle of local taxation by the voters of a district to supplement the public school fund and provide for school buildings has been reflected in the constitutions of the state since 1879.⁴ From the beginning of the present century, particularly, local taxation has become one of the chief sources of public school revenue.

School districts from their beginning were permitted to levy special taxes for the needs of the schools, but no feasible provisions were made whereby bonds might be issued for building purposes until the 1906 amendment to the Constitution of 1898 permitted the property taxpayers of a school district to hold an election for determining their census with respect to levying a special tax upon which to issue bonds.⁵ This modern method of carrying out a building program was greatly improved under the Constitution of 1921, which specified that school districts might issue bonds for "acquiring lands for building sites and playgrounds, and for purchasing, erecting, enlarging or improving school buildings and teachers' homes, and acquiring the necessary equipment

²Acts of Louisiana, 1869, No. 121, sec. 60.

³Ibid., Extra Session, 1870, No. 6, sec. 27.

⁴Constitution of Louisiana, 1879, art. 209.

⁵Ibid., 1898, art. 281, as amended by Act No. 122 of 1906, adopted November, 1906.

and furnishings therefor."⁶

That the people of Louisiana have come to exercise the right of suffrage for the benefit of public education in their respective districts may be indicated by the fact that in 1930-1931 special taxes for current operation of public schools amounted to \$6,047,128 and for capital outlay, \$3,279,428.⁷ It is reasonable to expect differences of opinion to arise concerning the law for ascertaining the will of the people of the various districts when an increase in educational facilities is sought through this autonomous privilege.

Legal Bases for Special Tax Levies Approved

The law governing the levying of special taxes which elections only can authorize can best be shown by those contested elections which were carried to the supreme court because of various alleged irregularities and which were declared to be legal and the tax levy and other appurtenances pertaining thereto valid.

Constitutionality of special taxes. The existence of the condition under which taxpayers in one district of a parish pay a special school levy differing in amount from that paid in another district of the parish seems to have been the basis of considerable misunderstanding among those who pay

⁶ Constitution of Louisiana, 1921, art. 14, sec. 14(b).

⁷ State Department of Education of Louisiana, Eighty-fourth Annual Report, for the Session 1932-33 (Baton Rouge, 1933), p. 14.

the taxes. The charge has been that such practice is in violation of the constitutional right which assures uniformity of taxation. In 1915⁸ this issue came to the court for adjudication when one district which was created from a part of another voted a levy with the effect that the rate in the new district was higher than that in the old district. In the court's decree it was held that by article 281 of the Constitution of 1913, special recognition was given to school districts on matters pertaining to taxation for schools. Also, the constitutionality of such taxes, although they may be levied to different amounts, was upheld by the following explanation:

While article 225 provides that "taxation shall be equal and uniform throughout the territorial limits of the authority levying the tax," the several parish boards of directors of the public schools throughout the state are authorized to impose additional taxes for the support of the public schools in the school districts of the parishes. The property taxpayers in any one school district of a parish may authorize additional taxation within their district for additional support of the public schools, and for the purpose of erecting schoolhouses in such district, although taxpayers in other school districts, in the same parish, may not impose upon themselves the same or an equal amount of taxation. The objection of plaintiff, therefore, that the tax in district No. 50 is not equal and uniform with the tax imposed in school district No. 37, or other districts in Avoyelles parish, is not well founded.⁹

In 1930¹⁰ a very similar complaint was made to the effect that by the enlargement of a school district and the laying of a

⁸Drouin et al. v. Board of Directors of Public Schools of Parish of Avoyelles, (1915) 136 La. 393, 67 So. 191.

⁹Ibid., 136 La. 395.

¹⁰Woodard et al. v. Bienville Parish School Board, (1930) 169 La. 831, 126 So. 207.

levy in the newly created district the property owners in the old area were subject to a higher levy than those in the newly added territory. Again, the court held this as not being inequality of amount of taxation within the meaning of the constitution.

In the Gulf Refining case¹¹ a parish tax, for school purposes had been voted by the people and assessed against certain oil held in storage by the appellant. This tax was contested on the ground that it constituted an abuse of the taxing power by taking the appellant's property without due process of law for the benefit of persons, including property owners, other than the appellant. The Federal Court held not only that neither the appellant nor his property was discriminated against, but also that the tax was for a purpose which was beneficial to property and persons located in that district and was not rendered invalid by reason of the fact that it may not have resulted in the same measure of benefit to the appellant or his property as to other persons or property located in the district.

When the creation of the Ouachita Parish Junior College was attacked on various grounds of unconstitutionality of the supporting tax, the legality of a tax for the upward extension of secondary education was held.¹² Such tax is not violative of the uniform taxation clause, for it is levied on

¹¹Gulf Refining Co. of Louisiana v. Phillips, Tax Collector. Same v. Sandlin, Tax Collector. (1926) (Cir. Ct. of App.)
11 Fed. (2d) 967.

¹²McHenry et al. v. Ouachita Parish School Board, (1929)
169 La. 646, 125 So. 841.

all taxable property in the district, which must comprise an entire parish. It falls within the classification of special taxes, as does the tax voted for a high school. The tax is a local one voted for the support of a purely local institution. Since the particular city, Monroe, was no longer exempt from general parochial taxation, the parish school board had authority to tax property within the city for the support of the junior college of the parish. The statement of the purpose of the tax included, "'for acquiring, erecting, constructing, establishing, operating, and maintaining a Junior College in said Junior College District'";¹³ this was held to be not several purposes but practically a single proposition, since the purposes of construction and maintenance are essentially interwoven. The court's conclusion was that the levy and assessment of the special junior college tax "do not deny to plaintiffs the equal protection of the law, nor deprive them of their property without due process of law."¹⁴ Herein was legalized the support of parish junior colleges by local taxation.

Necessity for limitations of levy to consider taxing areas as distinct entities. Frequent controversies have arisen over the constitutional limit of special taxation for school purposes, especially with regard to a subschool district tax in connection with a district tax, a district tax in connection with a parish tax, and tax on land lying in overlapping

¹³Ibid., 169 La. 663.

¹⁴Ibid., p. 664.

districts.¹⁵ The Constitution of 1921 defines the limitation as follows:

For the purpose of constructing or improving public buildings, school houses, roads, bridges, levees, sewerage or drainage works, or other works of permanent public improvement, title to which shall be in the public, or for the maintenance thereof, any political subdivision may levy taxes, in excess of the limitations otherwise fixed in this Constitution, not to exceed in any year five mills on the dollar for any one of said purposes, and not to exceed in any year twenty-five mills on the dollar, on any property, for all of said purposes; and for giving additional support to public schools, any parish, school district or sub-school district, or any municipality, which supports, or contributes to the support of, its public schools, may levy taxes, in excess of the limitations otherwise fixed in this Constitution, not to exceed, in the aggregate, on any property, in any year, eight mills on the dollar; provided, no special tax authorized by this section shall run for a longer period than ten years, and provided further, that the rate, purpose and duration of any such special tax shall have been submitted to the resident property taxpayers qualified to vote in the subdivision in which the tax is to be levied, and a majority of those voting, in number and amount, shall have voted in favor thereof. The provisions of this section shall not affect the validity of any tax levied by authority of an election held prior to the adoption of this Constitution.¹⁶

The limitations provided for were the bases of issues brought in 1925 by companies having investments in districts and sub-school districts of the parish of Webster.¹⁷ Due to the location of the lands the levy of a parish-wide two-mill school tax raised the total special levy on some of their

¹⁵Opinions of the Attorney General of Louisiana: June 1, 1912, to May 1, 1914, p. 213; May 1, 1918, to May 1, 1920, pp. 313, 427.

¹⁶Constitution of Louisiana, 1921, art. 10, sec. 10.

¹⁷Louisiana & A. Ry. Co. et al. v. School Board of Webster Parish et al., (1925) 157 La. 1046, 103 So. 318.

property to twenty-seven mills and the total school tax to more than eight mills; on this basis they contested. The court pointed to errors in their contentions as follows:

- (1) It was not correct to add the various levies in districts and subdistricts to determine whether or not the total special levy limit had been exceeded. In 1924 it had been explained that a "parish-wide school district and the smaller school districts within its limits are separate and distinct political subdivisions of the state, and may therefore exist at the same time, and independently of each other, for purposes of special taxation in giving additional aid to public schools."¹⁸ Likewise, the court here said, ". . . each subdivision shall remain unaffected in its right by the taxes imposed under the section by other political subdivisions in the same territory."¹⁹
- (2) The addition of levies in districts and subdistricts to determine whether or not the total levy for giving additional support to public schools exceeded eight mills was not proper. The possible outcome of such a method was pointed to by the court as follows:

If the interpretation contended for by plaintiffs is correct, the result would be, as we have heretofore indicated in discussing the 25-mill limitation that, because some enterprising school district, perhaps in a remote corner of the parish, had voted and was levying an 8-mill tax for the support of the schools, a parish wide school district or a parish in which the remote district is located, which saw the need for a parish wide tax for the

¹⁸Hinton et al. v. Winn Parish School Board, (1924) 155 La. 673.

¹⁹Louisiana & A. Ry. Co. et al. v. School Board of Webster Parish et al., (1925) 157 La. 1051.

same purpose, could not vote and levy it. It seems obvious to us that the constitutional convention intended no such result.²⁰

(3) The inclusion of the eight-mill limitation for additional support to public schools in the limitation of twenty-five mills for all of such purposes was in direct violation of the plain words of the section of the constitution providing for both limitations.

This recognition of the distinct entity of districts was later manifested by the explanation to the school authorities of West Carroll Parish that the levying of an eight-mill tax for the support of the public schools in the parish-wide district would not prohibit a similar levy by a subschool district created out of a portion of the parish.²¹

In 1930 the theory of the distinct entity of districts was again upheld when the court called to the attention of complainants that the tax in a certain old district was equal and uniform and that likewise it was equal throughout the district as enlarged.²² The status of the new district was thus defined: "The enlarged district is a separate and distinct legal entity from the several school districts as they existed before being merged into one."²³

²⁰Ibid., pp. 1055-1056.

²¹Opinions of the Attorney General of Louisiana, May 1, 1928, to April 30, 1930, p. 506.

²²Woodard et al. v. Bienville Parish School Board, (1930) 169 La. 831, 126 So. 207.

²³Ibid., 169 La. 837.

Again, in the year 1932, the eight-mill limitation of special school taxes was contested.²⁴ In the instant case the excess resulted from overlapping districts and the theory established was that the total constitutional tax which may affect a parcel of property is limited only by eight mills multiplied by the number of taxing districts having jurisdiction over it.

Thus, in interpreting the limitations on special school taxes prescribed by the Constitution of 1921, the court has upheld definitely and continuously the policy of recognizing each parish, school district, or subschool district as a distinct entity, the one having the privilege of levying taxes up to the limit regardless of such taxes levied by the others.

Levying and collecting the voted tax. Various controversies have arisen concerning the levying and collecting of the tax voted for the benefit of the public schools and in the decisions thereof several principles governing this practice have been established as follows.

The title to the school property involved in the levying of a special tax--for example, the lot on which a school building is to be constructed--must vest in the public. This principle was upheld when some taxpayers charged violation of this regulation but in which case evidence was accepted as showing that there was public ownership of the lot in question.²⁵

²⁴Delta Land & Timber Co. v. Beauregard Parish School Board, (1932) 174 La. 357, 140 So. 502.

²⁵Baucum et al. v. Police Jury of Claiborne Parish, (1907) 119 La. 532, 44 So. 289.

There seems to be no final date on which a tax on the current assessment may be voted and levied.²⁶ In reply to the complaint that certain taxing ordinances were illegal because they imposed taxes for a year that had already well elapsed, the court established this principle by stating:

We know of no statute which forbids the levy of special school taxes on the assessment of the current year. It is the mandatory duty of the police jury, whenever a petition is presented by the required number of taxpayers, to order a special election, and when the special tax is voted, to immediately pass an ordinance levying such tax, for the year or years designated in the petition of the taxpayers. Act 131 of 1898, p. 200; Act No. 174 of 1902, p. 327; Act No. 145 of 1904, p. 317.²⁷

Whether a formal resolution of the board of school directors is necessary to authorize the assessment of a tax was one of the questions in the Gulf Refining case.²⁸ Therein the secretary of the board directed, in writing, the tax assessor to assess a tax which had been duly authorized by the taxpayers. The attack was that the validity of the tax depended upon its formal levy by resolution of the board, but the Federal Court held that this was not necessary and that the action of the board sufficiently indicated its purpose to have the voted tax assessed and collected.

²⁶Argyle Planting & Mfg. Co., Limited, v. Connely, Sheriff, et al., (1910) 125 La. 685, 51 So. 687.

²⁷Ibid., 125 La. 687.

²⁸Gulf Refining Co. of Louisiana v. Phillips, Tax Collector. Same v. Sandlin, Tax Collector. (1926) (Cir. Ct. of App.) 11 Fed. (2d) 967.

The law pertaining to the commission for collecting special school taxes was established by the court in 1916.²⁹ The sheriff involved in the litigation had failed to turn into the treasury a part of the special school taxes which he had collected. This amount was claimed by him as his commission granted under article 120 of the Constitution of 1898, which read in part: "The compensation of sheriffs as tax collectors shall not exceed five per cent on all sums collected and paid over." As a basis for its decision, the court cited the controlling statutory law:

. . . provided further that no sheriff and ex officio tax collector shall receive any compensation for the collection of special school taxes except in parishes where the total amount of state, parish, levee and poll taxes and licenses collected do not amount to \$50,000. Be it further provided that in parishes where the collection of state, parish, levee and poll taxes and licenses do not amount to \$50,000, the sheriff and ex officio tax collector shall receive five per cent. on amount collected and actually paid into the state and parish treasury or to the authority designated to receive the same.³⁰

The total state, parish, poll, and license taxes, as determined by the court, exceeded \$50,000, hence there was the interpretation that the sheriff should not be allowed commission on the special school taxes collected in the year in question.

Regulations in elections. Lay opinion in interpreting the constitutional and statutory provisions of regulations in elections to vote special school tax levies has been varied.

²⁹Board of School Directors of Jackson Parish v. McBride, Sheriff, (1916) 138 La. 598, 70 So. 527.

³⁰Acts of Louisiana, 1908, No. 181, sec. 1.

In establishing the law pertaining to such elections, the court has pointed out the governing principles, the chief ones of which are here presented.

1. Voters qualified by election laws of the state.

In 1907³¹ it was judicially decided that those who vote at school tax elections must be duly qualified under the election laws of the state, including the general regulation pertaining to the payment of poll taxes. The court expressed its opinion with reference to the voter thus: "We think that he should produce his poll tax receipt, as in every other election, whether special or general, if not exempt on account of age."³² Also attention was called to the direction in article 232 of the Constitution of 1898 that the tax "shall" be submitted to a vote of the property taxpayers entitled to vote under the election laws of the state--that one of those laws required a recognized voter to have paid his poll tax for the two years preceding. A statute³³ enacted later, 1921, was interpreted to require the payment of the poll tax as a prerequisite for voting in such elections.³⁴ In 1933 the qualifications were defined to include poll tax payment as follows: "The actual present owner of the property on the day of the election, provided he possesses the other requirements to vote, that of

³¹Cruner et al. v. Police Jury of Claiborne Parish, (1907) 119 La. 551, 44 So. 295.

³²Ibid., 119 La. 553.

³³Acts of Louisiana, Extra Session, 1921, No. 46, sec. 13.

³⁴Opinions of the Attorney General of Louisiana, May 1, 1922, to May 1, 1924, p. 490.

residence, registration, and poll tax payments, can vote the property."³⁵

In general, it seems that the dominant policy of the state has been to adhere to the general election laws in determining who may be eligible to participate in special school tax elections,³⁶ except that the property qualifications are fixed by special statutes³⁷ and that permission to vote is granted to women who are the owners of property or widows who may be able to establish usufructuary interests in their deceased husbands' property.³⁸

2. Reasonable opportunity to register sufficient.

To follow the letter of the law with regard to the registration of voters preceding special elections is sometimes very difficult and not possible, the court has admitted, therefore the interpretation which is practical is the one which has often been rendered. By Act No. 122, Extra Session, 1921, provision is made for: the registration of voters, parish of Orleans excepted, every four years, commencing on the second day of January, 1922; prohibiting registration during the thirty days immediately preceding a special, general, or primary election; and keeping the registrar's office open for the thirty days, Sundays and legal holidays excepted, im-

³⁵Ibid., May 20, 1932, to April 1, 1934, p. 362.

³⁶Ibid.: May 1, 1902, to May 1, 1904, p. 191; May 1, 1914, to May 1, 1916, p. 438; May 1, 1930, to April 30, 1932, p. 456.

³⁷Ibid.: May 1, 1910, to May 1, 1912, p. 296; May 20, 1932, to April 1, 1934, p. 362.

³⁸Ibid.: May 1, 1906, to May 1, 1908, p. 298; May 1, 1914, to May 1, 1916, p. 438; May 1, 1930, to April 30, 1932, p. 456.

mediately preceding the closing of the registration rolls. Section 3 of Act No. 256 of 1910, governing the notice of special elections, requires that after the resolution ordering the election is passed, notice of the election shall be given for thirty days by publication in a weekly newspaper once a week for four weeks, and if there be no newspaper in the parish, then by posting the notice for that time. To fulfill the requirements of the act concerning registration it would be necessary for the notice of the special election to be published something more than sixty days prior to the date for holding the election, but the act governing the publication of the notice of election has not that requirement.

The court was presented the problem of clarifying these two seemingly conflicting statutes when some taxpayers in the parish of Natchitoches sought to annul an election on the ground that a sufficient time within which to register was not allowed those entitled to qualify in order to vote.³⁹ The election in question was set for March 15, 1926, and the first publication of notice was made February 5, 1926. It was shown that although the voters were not permitted to register for the thirty days immediately preceding March 15, they could have registered at least every Friday and Saturday, with the exception of one Friday, which was a legal holiday, from January 1, 1926, to February 5, 1926, those being the days, even when there is no election approaching, on which the registrar's office was required to be open. Also there were from the day

³⁹ Bonds et al. v. Natchitoches Parish School Board, (1927) 164 La. 584, 114 So. 166.

of publication of the notice, February 5, to the day of the closing of the registration rolls, February 13, six legal days in which to register, for the registrar's office was required to be kept open daily during that period. The court said:

"As a practical proposition, we think that this was sufficient time for the approximately 240 voters in the district to register, even assuming that all of them, as property taxpayers, were entitled, on registering, to vote in the district."⁴⁰ It was admitted, however, that this decision was not according to the letter of the law prescribing the length of time registration rolls were to be kept open preceding an election of this nature, but it was pointed out that the two statutes must be construed together to reach a fair interpretation. On that basis the court explained:

. . . what is meant is that the registrar, in such elections as the present, shall keep his office open for the 30 days immediately preceding the closing of the registration when he learns of the election in time to do so, after learning of it, during what remains of that period. The law is satisfied if the voters have had a reasonable opportunity to register. In this instance, we think they have.⁴¹

3. Current assessment proper one for determining list of voters. When an attempt was made to annul an election on the grounds that it was held on the basis of the incomplete assessment rolls of the current year instead of on the completed rolls of the previous year, the court upheld the contentions

⁴⁰Ibid., 164 La. 592.

⁴¹Ibid., p. 593.

of those responsible for the election.⁴² Their defense was article 232 of the Constitution of 1898 which provided that those who were privileged to vote on questions of this nature were those property taxpayers of the school district entitled to vote under the election laws of the state. As judicially interpreted, the organic provision contemplated that the voter should be a property taxpayer at the date of election, which qualification could be shown only by an assessment.⁴³ The court admitted that had there been no assessment for 1905, the assessment of 1904 would have governed. There was judgment for the defendants; it declared that "The transcription of the lists and the filing of the rolls cannot affect the assessment of property already made, and final unless reversed by judicial action."⁴⁴ Consequently, it was held that the names of the taxpayers and the valuations of property were properly taken from the current assessment.

4. Bases for the voting of property. The carrying of a special tax election depends upon the affirmative vote of the majority in number and amount of property valuation. The officials in charge are called upon in practically every election to rule in some respect concerning the voting of property.

⁴²Flores et al. v. Police Jury of DeSoto Parish et al., (1906) 116 La. 428, 40 So. 785.

⁴³Ibid.

⁴⁴Ibid., 116 La. 430.

The chief principle established by the courts in litigations on this subject seems to have been that one who votes property must be owner at the time of election. The court rendered this interpretation when there was contest because the commissioners refused permission to vote to a man who was assessed with property the year before but who had sold said property at the time of the election. The court endorsed the commissioners' action as correct and dismissed the question by saying: "He was not the owner of that property at the time of the election--he had sold the same."⁴⁵ The same principle was maintained in 1933 in an opinion which declared that the property must be possessed at the time of election by the one who offers to vote.⁴⁶ Concerning the voting of partnership property the courts and legal advisers have upheld the correctness of permitting the individual members to divide the assessment upon the assets of their firm and each to vote upon his pro rata interest therein.⁴⁷

5. Mere error in judgment of commissioners not sufficient cause alone for nullifying election. Commissioners at special tax levy elections have many detailed and widely varied rulings and decisions to make in determining who may

⁴⁵Smith v. Parish Board of School Directors, (1910) 125 La. 1003.

⁴⁶Opinions of the Attorney General of Louisiana, May 20, 1932, to April 1, 1934, p. 362.

⁴⁷Smith v. Parish Board of School Directors, (1910) 125 La. 987, 52 So. 122; Opinions of the Attorney General of Louisiana: May 1, 1908, to May 1, 1908, p. 238; May 1, 1914, to May 1, 1916, p. 243; May 1, 1922, to May 1, 1924, p. 601.

or may not vote. In this connection the court seems to have been considerate in contests brought for its jurisdiction. Error in the judgment of the commissioners was charged by one plaintiff when he alleged that a number of persons were incorrectly permitted to vote. In the trial of the case⁴⁸ the defendant showed that some of the voters in question were legally authorized to vote and the court ruled, as it had done in other instances,⁴⁹ that this mere error in judgment was not sufficient cause within itself to annul the election. In another charge the plaintiff admitted that the votes improperly received and improperly excluded would not have changed the result of the elections. Again, the court said that since the commissioners acted in good faith, the elections should not be set aside for their errors of judgment.⁵⁰

Regulations in petitions, resolutions, and ballots.

A parish school board may order an election to vote a tax without being petitioned by the voters;⁵¹ if such board is petitioned by one-fourth of the qualified property taxpayers,

⁴⁸Smith v. Parish Board of School Directors, (1910) 125 La. 987, 52 So. 122.

⁴⁹Widow Conant et al. v. L. Millaudon et al., (1850) 5 La. Ann. 542; C. C. Duson v. C. M. Thompson, (1880) 32 La. Ann. 861; H. McKnight v. A. V. Ragan, (1881) 33 La. Ann. 398; L. J. Luckey et al. v. Police Jury of Bienville Parish et al., (1894) 46 La. Ann. 679, 15 So. 89.

⁵⁰Flores et al. v. Police Jury of De Soto Parish et al., (1906) 116 La. 428, 40 So. 785.

⁵¹Opinions of the Attorney General of Louisiana, May 1, 1930, to April 30, 1932, p. 455.

it must call the election.⁵² Statutory provision as to the content of the petition seems to have changed from the object and the amount of the tax in 1898 to the object and the rate of the tax in 1904.⁵³ The place and manner of recording a petition requesting the call of an election have not been specified by statute; the court has held that inclusion of such record in the minutes of the proceedings of the parish board of school directors fulfills all the requirements of the law in this respect.⁵⁴ The board's resolution which calls the election requested by the petition meets statutory requirements if it includes the rate, object, and purpose of the tax and the number of years it is to run, with the addition of the rate of interest to be paid when a bond issue election is being called.⁵⁵ If a ballot has the form prescribed by the governing statute and gives the voters all the required information, there is no necessity for the proposed location of the school building to be stated on the ballot.⁵⁶

Regulations in contesting special tax elections.

Those who contest special tax elections must bring their suits

⁵²Ibid.; Hinton et al. v. Winn Parish School Board, (1924) 155 La. 666, 99 So. 523.

⁵³Acts of Louisiana, 1898, No. 131, sec. 2; Ibid., 1904, No. 145, sec. 2; Baucum et al. v. Police Jury of Claiborne Parish, (1907) 119 La. 532, 44 So. 289.

⁵⁴Thomas et al. v. Board of School Directors of Parish of Webster, (1915) 136 La. 499, 67 So. 345.

⁵⁵Drouin et al. v. Board of Directors of Public Schools of Parish of Avoyelles, (1915) 136 La. 393, 67 So. 191; Thomas et al. v. Board of School Directors of Parish of Webster, (1915) 136 La. 499, 67 So. 345.

⁵⁶McWilliams et al. v. Board of Directors of Iberville Parish et al., (1911) 128 La. 422, 54 So. 928.

within the time prescribed for such action if their complaints are to be considered by the court. When the plaintiffs in a case⁵⁷ involving this regulation objected to the defendants' plea of prescription of three months on the ground that there was no statute in force authorizing such prescription, the court pointed to their error in reasoning as follows:

The same reasons which plaintiffs assign for urging that there is no prescription applicable to the case would carry with them as a result the destruction of any right of action in plaintiffs to contest the election held under authority of the police jury on April 9, 1907, for the statute upon which plaintiffs base their right of action to contest the election limits in its second section the right of action to three months. If plaintiffs are forced (as they are) to invoke the statute to sustain their right to such an action, defendants have the undoubted legal right to resist such an action on the ground that it was not instituted within the time limit.⁵⁸

Thus, the court not only upheld the right of prescription, but also emphasized the preservation of the balance of power through the right of contest to carry with it the right to protect by prescription. The statute upon which the action in the previous case was founded was Act No. 106 of 1892 based on the Constitution of 1879. When the same objection--that this statute did not apply to elections held under the Constitution of 1898--was later pleaded by other plaintiffs,⁵⁹ the court, after having reviewed all the statutes enacted since the adoption of the later constitution, said:

⁵⁷Polse et al. v. Police Jury et al., (1910) 125 La. 603, 51 So. 658.

⁵⁸Ibid., 125 La. 617.

⁵⁹Wagner et al. v. Police Jury of Parish of Jefferson et al., (1910) 125 La. 863, 51 So. 1016.

The General Assembly has never made any provisions for contesting elections held under article 232 of the Constitution, nor has passed any statute of limitations with respect to such elections. This inaction can be explained only on the theory that the lawmaker considered Act No. 106 of 1892 as applicable to such elections.⁶⁰

By these decisions the court upheld very definitely that those who charge irregularities in a special tax election must abide by the prescriptive provision in force at the time.

Also, the court has found it necessary to maintain some other regulations concerning a contest. After a plea is made, it must confine itself to the specific grounds of contest. Upon this principle no heed was given a plaintiff who alleged that an inspection of the ballot box and its contents, which he prayed to be brought into court and examined, would reveal other irregularities and illegalities.⁶¹

Upon those who contest rather than upon the court rests the responsibility of proving their contentions. Where plaintiffs charged irregularities in the content of the ballot boxes without producing the boxes in evidence and declared that elections were not held in two of the precincts without submitting any records to that effect, the court ruled that in the absence of proof to the contrary the election must be decreed as having been properly held.⁶² Plainly it said to the plaintiffs that the burden of proof was on them when they made accusations.

⁶⁰Ibid., 125 La. 868.

⁶¹Smith v. Parish Board of School Directors, (1910) 125 La. 987, 52 So. 122.

⁶²Bonds et al. v. Natchitoches Parish School Board, (1927) 164 La. 584, 114 So. 166.

Disposition of Funds Derived from Special Levies

When taxpayers feel sufficiently the need for better schools within their district their statutory right of expression to that effect is by means of special levies voted upon their property. Consequently, the levy which they authorize is for a specific purpose and they have protection in the legal theory that the fund so derived must be spent as directed by them.⁶³ For example, the court said in 1931, "When a special tax is voted to erect a public school building, the proceeds of such tax can be used for that and no other purpose."⁶⁴ Also, the tax which is voted in one ward is considered as sacred to the use of that ward and is not to be diverted to the use of another.⁶⁵ In this connection, the court has said:

It is clear . . . that special taxes voted by a school district constitute a fund which is dedicated by law exclusively to the use of that particular district. Such special fund forms no part of the general or current school funds, and the only authority that a school board can exercise over such fund is to levy and pay it, when collected, to the school district voting the tax.⁶⁶

Expenditure in district of special maintenance tax.

In the disposition of this type of special tax voted to give "additional aid to the public schools," as usually expressed, the school authorities seem to have needed frequent assistance,

⁶³Opinions of the Attorney General of Louisiana, May 1, 1908, to May 1, 1910, p. 363.

⁶⁴Watkins v. Ouachita Parish School Board, (1931) 173 La. 267.

⁶⁵Opinions of the Attorney General of Louisiana, May 1, 1914, to May 1, 1916, p. 246.

⁶⁶Hinton et al. v. Winn Parish School Board, (1924) 155 La. 675.

particularly, when a surplus has accumulated from the collection of the tax so authorized. With the explanation that such action is in violation of the letter of the law but in keeping with the spirit, school officials have been advised that a sufficient amount of the excess revenue might be used for putting down wells.⁶⁷ With more hesitancy, and in case of a clear excess of funds beyond the amount needed for maintenance, legal opinion has sanctioned the expenditure of such funds for the building of schoolhouses.⁶⁸ Other purposes for which the proceeds of this tax may be used include the defraying of the cost of paving the highway which abuts the property of the school⁶⁹ and the meeting of expenses arising from constructing, equipping, or maintaining the plant and buildings at a new location of the school in the district--the latter to be expended from the balance accruing from the tax.⁷⁰ Also, the surplus may be expended as necessary for transporting elementary children within the district to the elementary school therein.⁷¹

Effect of consolidation upon tax of original districts.

The consolidation of school districts has presented the question as to what disposition should be made of the funds of an old district after it consolidates with another. In reply to

⁶⁷ Opinions of the Attorney General of Louisiana, May 1, 1906, to May 1, 1908, p. 297.

⁶⁸ Ibid., May 1, 1916, to May 1, 1918, p. 448.

⁶⁹ Ibid., May 1, 1930, to April 30, 1932, p. 441.

⁷⁰ Ibid., May 1, 1932, to April 1, 1934, p. 1008.

⁷¹ Ibid., p. 288.

those who were contemplating consolidating two districts and who wished to know if they might use for the new district the special levies which were existent in the original districts the attorney general advised:

. . . in the absence of express statutory authority, or a clear rule of jurisprudence, in Louisiana it is extremely doubtful whether special taxes previously voted for the express purposes of giving additional aid to the schools of a particular district could be thereafter devoted toward maintaining schools of a thereafter consolidated district.⁷²

The following reasoning was adopted in solving the problem where two districts had been consolidated, with only one school to continue, and there had been voted in the district of the discontinued school a special tax for building and improvements, which had accumulated a fair sum. The money could have been used to improve or increase the buildings in the original district, and the board had authority to sell such buildings and reinvest the proceeds in the erection of a building at another location.⁷³ In that way a building in the consolidated district could have been made to derive the benefit of the fund. The attorney general saw this action to produce the same result as devoting the avails of the tax directly to the school in the consolidated district; thereupon, he ruled, although admitting that there was not freedom from doubt, that the money could be used for the consolidated district.⁷⁴ Very recently this opinion was upheld, when it

⁷² Ibid., May 1, 1926, to April 30, 1928, p. 297.

⁷³ Acts of Louisiana, 1922, No. 100, sec. 20.

⁷⁴ Opinions of the Attorney General of Louisiana, May 1, 1928, to May 30, 1930, p. 508.

was advised that the balance of funds belonging to the old district could be used in the consolidated district for all or any of the purposes for which the tax was levied in the original district.⁷⁵

Expenditure through certificates of indebtedness.

An attack on the method which a parish school board used in securing building funds brought before the court⁷⁶ the issue as to whether or not the board "had the right to so anticipate its revenues under the special tax, by borrowing money, pledging a portion of said tax and issuing certificates of indebtedness, to the extent and under the terms of payment as set forth in the ordinance of the School Board."⁷⁷ After having defined the status of the school board as that of a body corporate in law and as the governing authority of the junior college district, in question, the court said with reference to the constitutional provision⁷⁸ under which this action by the board was contemplated:

There is nothing in this article of the Constitution nor in Act 173 of 1928, the junior college law under which the tax in the instant case was voted, which prohibits school boards from anticipating the revenues to be derived from the levy of such taxes or the pledging of them in advance of their collection in order to obtain funds with which to construct the buildings, nor is there anything to indicate that it was intended that the

⁷⁵Ibid., May 1, 1932, to April 1, 1934, p. 290.

⁷⁶Watkins v. Ouachita Parish School Board, (1931) 173 La. 259, 136 So. 591.

⁷⁷Ibid., 173 La. 265.

⁷⁸Constitution of Louisiana, 1921, art. 10, sec. 10.

boards should postpone the erection of such buildings until sufficient funds for that purpose shall have been collected.⁷⁹

The statutory conditions under which this debt might be incurred were outlined as follows:

The anticipation of the avails of a special school building tax voted to run for a series of years to be collected annually and the issuance of certificates of indebtedness to be paid annually from the tax as collected, and the pledging of the tax to secure the payment of the certificates, is not violative of section 32, Act 100 of 1922, as amended by Act 19 of 1926, where the aggregate amount of the certificates does not exceed the net avails of the tax and where the net proceeds of the tax collected each year are sufficient to pay the certificates, and all interest, as they mature.⁸⁰

In upholding this method of disposition of funds through certificates of indebtedness, the court decreed:

The proceeding taken by the board makes it perfectly clear that it did not intend by the issuance of these certificates and the borrowing of money to erect the building, to create a general outstanding indebtedness which it would be unconditionally obligated to pay out of its general revenues, but only to bind the board to the extent of its ability to pay from the revenues derived from the tax. These certificates are to be payable only out of the avails of the tax with reference to which they are to be issued and the holders of them will be charged with legal notice that they are not unconditional obligations of the board.⁸¹

Irregularities Sufficient to Nullify Special Tax Levies Proposed

The division here presented deals with the issues involved in cases on contested elections which the courts

⁷⁹Watkins v. Ouachita Parish School Board, (1931) 173 La. 270.

⁸⁰Ibid., p. 272.

⁸¹Ibid., p. 274.

have seen proper to declare null and void. The principles pointed out by the court's decisions herein may be taken cognizance of by those who wish to conduct their special school elections according to law; too, those who may feel that justice has not been meted out in the proceedings connected with an election have herein a partial guide to judicial endorsement of their allegations.

Practically all cases in this section involve several minor points each--most of which could be dismissed with a statement of the policy that irregularities and failure to comply with governing regulations render an election void; also, many of the points at issue appear in several cases. Since this is the condition, adjudications establishing the law are presented in groups and treated mainly by mere statements of the court's ruling with the addition of facts involved where the alleged violation is not sufficiently implied in the decision to clarify the ruling.

Unauthorized voting areas and amounts of levies.

In general the organic and statutory law and interpretations thereof have established that only those duly constituted school districts may vote additional taxes for school support. Both the parish precinct⁸² and the ward⁸³ have been definitely decreed as not being acceptable voting

⁸²Regard et al. v. Police Jury of Avoyelles, (1906) 117 La. 952, 42 So. 438.

⁸³Opinions of the Attorney General of Louisiana, May 1, 1926, to April 30, 1928, p. 281.

areas for this purpose. With respect to the parish as an area, it has been said recently, ". . . we think it clear that if the Parish . . . has been created into a school district in accordance with existing laws, that it could vote a special tax . . . for the support of the public schools of the parish."⁸⁴

Constitutional provision in 1921⁸⁵ fixed the maximum levy for special maintenance purposes at eight mills and for building purposes at five mills. Elections which violated these regulations by voting ten mills for the former⁸⁶ and eight mills for the latter⁸⁷ purposes, respectively, were consequently declared null and void, with the advice that the only remedy would be to hold other elections with constitutional limits observed in the amounts of the levies. However, the provision was not retroactive--a larger tax voted prior to the adoption of this constitution was not affected thereby.⁸⁸

Ambiguous statement of purpose not permissible. If special tax levies are to withstand contest, the purpose for which the proceeds are to be used must be of an authorized nature and must be so stated in definite propositions that

⁸⁴Ibid., May 1, 1928, to April 30, 1930, p. 507.

⁸⁵Constitution of Louisiana, 1921, art. 10, sec. 10.

⁸⁶Opinions of the Attorney General of Louisiana, May 1, 1920, to May 1, 1922, p. 858.

⁸⁷Ibid., May 1, 1922, to May 1, 1924, p. 453.

⁸⁸Ibid., p. 730.

the taxpayer in voting for one phase will not be entrapped into approving another. In terms of the ordinance ordering a certain election, the proceeds were "to be used in issuing certificates of indebtedness and equipping the public school building in said district"; as expressed on the ballot, the use was for "issuing certificates of indebtedness to build and equip a public school building in said school district."⁸⁹ Evidence showed that the purpose was to issue certificates as a means of securing money to pay the balance due on a building already practically built and to defray costs not disclosed to the taxpayer or to the courts, there being provision for a balance much more than sufficient to retire the indebtedness of the building. On the grounds that the purpose was misleading, was not lawfully permitted, and had not been submitted in full to the taxpayers, the levy was declared void. In issuing its decree the court emphasized some of the fundamental policies it has upheld with respect to special levies as follows:

As we have seen, however, the law does not contemplate, or authorize, the incurring, by the school boards, in one year, of debts to be paid from the revenue of another year; nor does the constitutional grant of authority, to levy special taxes for the additional support of the public schools and the erection of public school-houses, authorize such a tax for the payment of a debt already incurred, in disregard of the law which requires the budgeting of both revenues and expenditures, and the keeping of the expenditures of each year within its budgeted revenue.⁹⁰

⁸⁹Walsworth et al. v. Jackson Parish School Board et al., (1921) 149 La. 264, 88 So. 815.

⁹⁰Ibid., 149 La. 273.

Irregularities in petition, resolution, and notice.

When a petition for a special election is properly presented to a police jury or municipal authorities by at least one-third of the property taxpayers, it designates in writing the object and amount of tax to be levied each year and the number of years it is to run.⁹¹ Upon the police juries or the municipal authorities falls the responsibility of levying each year a tax sufficient to pay the specified amount--the rate is only to an extent sufficient to realize the necessary amount. Consequently, the court has held that failure of the petition to specify the amount is sufficient error to annul the results of an election.⁹²

The resolution calling an election--which election according to statutory provisions in 1910⁹³ is mandatory if petitioned by one-fourth of the qualified property taxpayers --is not valid if issued by minority board proceedings, and a tax voted at an election so called is null and void.⁹⁴ The minority proceedings in the case at bar resulted from a partial attendance at the board meeting, but the court did not see this as any justification of illegal action and expressed its policy thus:

The calling of the special meeting of
the board of school directors to be held within a

⁹¹Acts of Louisiana, 1898, No. 131, secs. 1-2.

⁹²Bennett et al. v. Police Jury et al., (1904) 113 La. 68, 36 So. 891.

⁹³Acts of Louisiana, 1910, No. 256, sec. 2.

⁹⁴Pryor et al. v. Board of School Directors of Claiborne Parish, (1917) 141 La. 301, 74 So. 1002.

time too short to permit all of the members to be notified was not done with any improper motive in this instance. The purpose in hurrying the proceedings was to hold the election at the earliest date possible, in order to have the special tax extended upon the assessment rolls before they would be closed. But we have to deal only with the deed, not the motive. It will not do to sanction proceedings whereby a minority of the members of an executive board controlled its affairs by voting at a special meeting of which the members who did not vote against the proceedings were not allowed an opportunity to vote at all.⁹⁵

Another defect in resolutions which rendered an accompanying election null was the failure to describe the boundaries of the contemplated district in such manner that the location on an official parish map might be clearly determined.⁹⁶

Petitions, resolutions, and notices concerning special tax levy elections may have varying requirements according to the governing legislative acts, but when they treat of the same things they must be consistent. In one case⁹⁷ brought before the courts, the resolution ordering the election and the proclamation to be published named a certain schoolhouse as the polling place, but in the publication of the notice during the required thirty days⁹⁸ no polling place was named and the voters were left to find it as best they could. Also, the resolution stated the rate of taxation to be used on the ballot as five mills but did not

⁹⁵Ibid., 141 La. 304.

⁹⁶Deblieux et al. v. Board of School Directors of Natchitoches Parish, (1917) 142 La. 147, 76 So. 590.

⁹⁷Capps et al. v. Parish Board of School Directors of Winn Parish, (1915) 138 La. 348, 70 So. 322.

⁹⁸Acts of Louisiana, 1910, No. 256, sec. 3.

state the period of levy; the published notice of the election gave the rate as ten mills and the period as ten years. The court held that these inconsistencies were errors and omissions amounting to nonobservance of essential requirements and that they placed the election outside of the law under authority of which it was assumed to have been held; therefore, the election was declared as of no legal effect.

Similar omissions--failure to designate definite voting place, the day, hour, and place when and where returns would be received, ballots counted, and result declared--were some of the principal reasons that a certain election held in 1912 was rendered illegal.⁹⁹ In a case in 1906 the failure of the police jury to publish its resolution ordering the election more than once, as provided in the governing act,¹⁰⁰ was declared an irregularity.¹⁰¹

Although the courts may have decided that as a whole an election was illegally and irregularly held and therefore rendered null and void, they often point out that certain allegations brought are insignificant or not violative of any law or regulations. An illustration of this was the judicial reply to a complaint¹⁰² against a notice which read, "For the purposes of said elections the polling places will be

⁹⁹Davis et al. v. Board of Directors of Parish of Bienville, (1912) 130 La. 786, 58 So. 572.

¹⁰⁰Acts of Louisiana, 1886, No. 35, sec. 1.

¹⁰¹Regard et al. v. Police Jury of Avoyelles, (1906) 117 La. 952, 42 So. 438.

¹⁰²Elkins et al. v. Board of School Directors of Parish of Union, (1915) 138 La. 207, 70 So. 99.

the schoolhouses of the respective school districts."¹⁰³
 It was shown in evidence that there was only one schoolhouse in each district. The court held that although the notice applied to two elections, it was explicit and not confusing and therefore was no fatal irregularity. In another case,¹⁰⁴ a similar minor irregularity was alleged to the effect that the resolution contained two propositions while the ballot contained only one. By interpreting "or" as having an explanatory meaning, equivalent to "in other words" and such phrases, singleness of the proposition in the resolution was established. However, the court criticized the resolution as not having ideal precision but accepted it as being sufficiently definite to serve the purpose.

Illegality pertaining to election officials and the polls. Upon the police jury falls the responsibility of appointing one of the supervisors of an election; the other two members are the registrar of voters and a person appointed by the governor. The failure of a police jury to perform this duty is considered a disregard of policy and a lack of compliance with law by a subordinate authority.¹⁰⁵ Although the appointment of a person other than a school board member as an election commissioner might be preferable, there is no legal regulation¹⁰⁶ which disqualifies the school board member to serve

¹⁰³Ibid., 138 La. 211.

¹⁰⁴Peck et al. v. Board of Directors of Public Schools for Parish of Catahoula, (1915) 137 La. 334, 68 So. 629.

¹⁰⁵White Hall Agr. Co. et al. v. Police Jury of Concordia Parish et al., (1911) 128 La. 668, 55 So. 11.

¹⁰⁶Elkins et al. v. Board of School Directors of Parish of Union, (1915) 138 La. 207, 70 So. 99.

in this capacity. The commissioners and clerks of elections must be sworn to perform all the duties enumbent on them as such. The failure of these officials to take the oath in the manner prescribed by the governing statute¹⁰⁷ is classified as a most serious irregularity.¹⁰⁸

Legislation pertaining to the time of the opening and closing of polls is ordinarily considered directory--that is, when there are unsubstantial departures from the law, but this does not apply when the omissions are so radical that it may be proved that voters were thereby deprived of their votes sufficient in number and amount to change the result of the election.¹⁰⁹ In a contest on this point it is not necessary that those who were deprived of voting specify the way in which they would have voted; only is it necessary to establish that the number was sufficient to have changed the results of the election.¹¹⁰ A lack of necessary commissioners, officials, and voters is no justification for irregular removal of the boxes from the polls by those in charge. In this connection the court has said:

Because a few voters at these two precincts declined to act as commissioners is no good or valid reason why these boxes should have been removed before the hour for closing the polls arrived. Other voters appearing there might have

¹⁰⁷Acts of Louisiana, 1910, No. 256, sec. 10.

¹⁰⁸Cain et al. v. Vernon Parish School Board, (1918) 142 La. 744, 77 So. 584.

¹⁰⁹Whatley et al. v. La Salle Parish School Board, (1924) 155 La. 797, 99 So. 603; White et al. v. Livingston Parish School Board, (1927) 163 La. 266, 111 So. 700.

¹¹⁰Whatley et al. v. La Salle Parish School Board, (1924) 155 La. 797, 99 So. 603.

elected commissioners and proceeded with the election, had the boxes been kept at the polling places, and made accessible to the voters.¹¹¹

Violative procedures in ballots and voting. Concerning proceedings at the polls where elections for the levy of special school taxes were being held the courts have had to deal with some major and many detailed problems allegedly violative of valid proceedings. From the reasoning in the various cases it appears that the court has striven to give always the interpretation that is fairest to all parties involved and in so doing it has often disregarded minor irregularities; on the other hand, the court seems to have been hesitant to establish precedent decisions which have a possibility of being reversed in subsequent cases. Outstanding among those procedures which have been declared violative by the courts are the following.

1. Failure to prepare list of voters correctly. The statute concerning the list of voters, as involved in the Elkins case,¹¹² prescribes as follows:

That it shall be the duty of the registrar of voters to furnish the commissioners appointed to hold such elections with the lists of taxpayers entitled to vote in person or by proxy at such elections, together with the valuation of each taxpayer's property as shown by the assessment roll last made and filed prior to each election; provided that, when any taxpayer's name and valuation of property shall be omitted from such list or erroneously entered thereon the commissioners of election shall have authority to receive affidavits of such taxpayer's right to

¹¹¹White et al. v. Livingston Parish School Board, (1927) 163 La. 271.

¹¹²Elkins et al. v. Board of School Directors of Parish of Union, (1915) 138 La. 207, 70 So. 99.

vote and of the proper assessed valuation of his property, which affidavit shall be attached to such taxpayer's ballot.¹¹³

Evidence disclosed that:

. . . a list of names without any valuation of property, was furnished by a deputy clerk of court to the local superintendent of the public schools, who copied it, and, with the assistance of the assessor, put the assessed valuation of the property of each taxpayer on the copy of the list, and gave it to the commissioners of election. After this unauthorized list or copy of the list, containing only 28 names, furnished by the deputy clerk of court, was delivered to the commissioners, 10 names were added with a pencil by an unauthorized person. And it does not appear that the commissioners required any voter whose name was thus added to the list to furnish an affidavit of his right to vote.¹¹⁴

On the first hearing the court did not decree the election null; it explained its decision thus:

There is very grave irregularity here, the like of which might, in an election on a larger scale, give rise to endless difficulties and complications at the poll; but in the election in the small school district here in question (the total list including the names added in pencil comprising only 38 persons), where, doubtless, every voter was acquainted with every other voter and knew what property he had, no complications arose, but the voting went on as regularly as if the list had emanated from the true legal source and had been duly certified, and no harm was done. There is no allegation or contention that the defectiveness of the list had any influence at all upon even a single vote. Under these circumstances we can see no sufficient reason why the election should be set aside because of this irregularity. There is no contention that the persons whose names were added in pencil were not entitled to vote at the election, and, no suggestion of fraud or ill practice, or of bad faith.¹¹⁵

¹¹³Acts of Louisiana, 1910, No. 256, sec. 6.

¹¹⁴Elkins et al. v. Board of School Directors of Parish of Union, (1915) 138 La. 218.

¹¹⁵Ibid., pp. 213-214.

In connection therewith several similar decisions were cited in which the results of an election were not set aside where votes irregularly received were later shown to be legal or were not sufficient to change the announced result of the election.¹¹⁶ However, on a rehearing, seven months later, the court reversed its decree, explaining its action as follows:

On reconsideration of the plaintiff's complaint, that the list of property taxpayers, by which the commissioners were governed in conducting this election, was made and furnished by an unauthorized person, we have concluded that, although no actual fraud has been shown in this case, our approval of the illegal or irregular proceedings by which this tax was imposed might establish an unwise and harmful precedent.

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This illegality in the proceedings warrants the annulment of the tax.¹¹⁷

Very similar irregularities in the preparation of the list of voters and in allowing those with questionable rights to vote without attaching affidavits of their rights to their ballots were practiced in an election the results of which were brought for adjudication in 1918.¹¹⁸ The court,

¹¹⁶Smith v. Parish Board of School Directors, (1910) 125 La. 987, 52 So. 122; McWilliams et al. v. Board of Directors of Iberville Parish et al., (1911) 128 La. 422, 54 So. 928; Endom et al. v. City of Monroe et al., (1904) 112 La. 779, 36 So. 681; Flores et al. v. Police Jury of De Soto Parish et al., (1906) 116 La. 428, 40 So. 785.

¹¹⁷Elkins et al. v. Board of School Directors of Parish of Union, (1915) 138 La. 217-218.

¹¹⁸Cain et al. v. Vernon Parish School Board, (1918) 142 La. 744, 77 So. 584.

in decreeing this election null, explained the seriousness of such violations thus:

Such a gross violation of the election law is so flagrant, and admits of such opportunities of fraud, where every provision of the law should be adhered to, so as to insure the solemn decision of the taxpayers at the election, that it vitiates the election, although no fraud is shown.¹¹⁹

2. Irregularities in ballots and balloting. When there is statutory prescription of the form of ballot to be used in special tax elections, this regulation must be met. If a board disregards this and uses a form of its own devising, such violation is considered one of the grounds sufficient for annulling the election.¹²⁰

Although statutory enactments concerning special school tax elections have changed from time to time, both these and the constitution have always contemplated that each elector shall do his own voting, without advice, suggestion, or interference from the commissioners or other persons. Exceptions for various groups have been made--for example, Act No. 131 of 1898 permitted women taxpayers to vote by proxy. Gross abuse of voting rights was practiced at an election where the property valuations voted on, with the exception of two affirmative votes totaling \$570 and 64 negative votes totaling \$83,687, which had their valuations upon the ballots, were entered upon the tally sheets after the closing of the polls. The entry was made by one of the com-

¹¹⁹Ibid., 142 La. 746.

¹²⁰Davis et al. v. Board of Directors of Parish of Bienville, (1912) 130 La. 786, 58 So. 572.

missioners--the other two having previously retired--the clerk, and some other persons; the amounts were ascertained, not from the then existent assessment rolls, but from a proposed assessment which one of the commissioners, who was also a deputy assessor, had in his possession. One amount was filled in the next day by the clerk and an outsider, after conference with the voter. The statute in force at that time, Act No. 131 of 1898, did not specifically require that the amount of the property valuation be expressed upon the face of the ballot, but it was certainly intended that the pecuniary vote should be determined by the voter, or at least by the public records, and not by the commissioners of election. In issuing its decree the court said that while no fraud was imputed to any of the parties concerned, in the interest of justice and from a proper regard for the principles of our government the result should not be allowed to stand.¹²¹ Similar abuse but in a milder degree, perhaps, was the charge in a case about three years later.¹²² Therein the voters placed their names upon the ballots, and the commissioners at the close of the election by reference to the assessment roll ascertained the amount of property voted by each. With respect to this the court said:

In compliance with the spirit of the law, the voter should, at the time he presents himself to vote, satisfy the commissioners regarding the amount of property he desires to vote. He should

¹²¹Bennett et al. v. Staples et al., (1903) 110 La. 847, 34 So. 801.

¹²²Regard et al. v. Police Jury of Avoyelles, (1906) 117 La. 952, 42 So. 438.

specify or cause to be specified on his ballot the property which he wishes to have counted as a part of his vote as a property taxpayer.¹²³

It seems that the legislature in 1910, having seen the trouble which had arisen from time to time over the proper method of determining the amount of property valuation voted, sought to reduce litigation thereupon and uncertainty of promulgation by incorporating in section 8 of Act No. 256 the requirement that the amount voted should be stated on the ballot. The court upheld the letter of the law in that respect when, in correcting the returns of an election, it held that the amount voted must have been stated in the blank left on the ballot for that purpose but not ascertained by some inference.¹²⁴

3. Controversies pertaining to voting of property.

For determining the valuation of property of those seeking to vote, the 1910 legislature made definite provision by specifying the last assessment roll as the legal basis.¹²⁵ Concerning the establishment of the ownership of property there has been enacted no such definite and simple provision; therefore, to the commissioners and often to the courts is left the problem of determining who is entitled to vote as a "property taxpayer." By the constitution and by legislative enactments the voters are required to be property taxpayers, and the meaning as interpreted by the courts is that he who votes must be a property

¹²³Ibid., 117 La. 956.

¹²⁴Peck et al. v. Board of Directors of Public Schools for Parish of Catahoula, (1915) 137 La. 334, 68 So. 629.

¹²⁵Acts of Louisiana, 1910, No. 256, sec. 4.

taxpayer at the time of voting and not merely assessed with the property he offers to vote.¹²⁶ Thus, often the commissioners have the responsibility of determining ownership to property before permitting a vote thereon. The legislative acts have provided that affidavits establishing a claimed right to vote may be accepted by the commissioners for verification by proper authorities. Nevertheless, many disagreements have arisen at the polls concerning the amount individuals were entitled to vote and not infrequently some have found their way through the lower courts to the higher court for adjudication. Illustrations of this are the following decisions which have been pronounced in various cases.

The surviving spouse, whether husband or wife, who is the usufructuary of the property belonging to the community of acquêts and gains at one time existent, and in whose name it is assessed, is entitled to vote the same. This holds when the community is unsettled and when no proof is made that the community owes any debts.¹²⁷ However, a surviving husband may vote only one-half of an assessment in his name representing community property which was acquired by his deceased wife during marriage and which estate has been settled; the other half vests in the heirs of his wife.¹²⁸

¹²⁶Smith v. Parish Board of School Directors, (1910) 125 La. 987, 52 So. 122; Elkins et al. v. Board of School Directors of Parish of Union, (1915) 138 La. 207, 70 So. 99.

¹²⁷Peck et al. v. Board of Directors of Public Schools for Parish of Catahoula, (1915) 137 La. 334, 68 So. 629; Elkins et al. v. Board of School Directors of Parish of Union, (1915) 138 La. 207, 70 So. 99.

¹²⁸Peck et al. v. Board of Directors of Public Schools for Parish of Catahoula, (1915) 137 La. 334, 68 So. 629.

A married woman is entitled to vote property assessed in her name where it is not shown that it was acquired during the existence of the community,¹²⁹ but her husband is not allowed to vote such property except when properly authorized.¹³⁰ The statute¹³¹ governing this authorization provides that ballots voted by proxy shall be signed by both the taxpayer and her proxy; in one instance, however, the attachment of the power of attorney to the ballot was held as sufficient identification when the proxy had failed to endorse the ballot.¹³² If the description on the assessment role indicates that property is situated outside the district, parol evidence may be admitted to show error in the situs of the real estate.¹³³ The proper method of determining the value of a deduction, made necessary by an incorrect inclusion of a number of acres in a tract valued in globo, is--in the absence of proof of the assessed value of the particular acreage--by means of aggregation in terms of the average assessment per acre.¹³⁴

That the adjudication of questions involving property vote at special tax elections had become burdensome to the

¹²⁹Bennett et al. v. Staples et al., (1903) 110 La. 847, 34 So. 801.

¹³⁰Elkins et al. v. Board of School Directors of Parish of Union, (1915) 138 La. 207, 70 So. 99.

¹³¹Acts of Louisiana, 1910, No. 256, sec. 11.

¹³²Elkins et al. v. Board of School Directors of Parish of Union, (1915) 138 La. 207, 70 So. 99.

¹³³Ibid.

¹³⁴Peck et al. v. Board of Directors of Public Schools for Parish of Catahoula, (1915) 137 La. 334, 68 So. 629.

courts is shown by the statement of Justice Olivier O.

Provosty in 1915, as follows:

Out of 78 votes cast at this election 24 were contested, necessitating an investigation of the land titles of the voters, and, incidentally, examination and study of succession settlements, community of acquêts and gains settlements, and tutorship settlements. Fortunately for this court the number of contests was reduced by the sifting process through which they passed in the lower court to the comparatively few hereinabove considered. Would that the Constitution could be so amended as to preserve the courts from the burden of these tax election cases by letting the registration and assessment rolls be, in the absence of fraud, the sole and final tests of the qualifications of the voter; and would that political election cases could be relegated to some other more appropriate tribunal!¹³⁵

Restrictions concerning promulgation of election and the levying ordinance. Consistently the court has held that the police jury is the authority to promulgate special tax elections for schools. When an attempt was made to secure the ruling that the secretary of state is the proper authority for such promulgation, the response was:

This court has never held heretofore that the Secretary of State is the officer who should make the promulgation in special tax elections for schools. . . . In order to decide that the police jury is not the proper authority, but that the Secretary of State should make the promulgation, we would have to find that the general election law is all controlling. . . . We think that the promulgation by the Secretary of State in a general election or in an election under a general law is one of those not applying to special election laws.¹³⁶

¹³⁵Ibid., 137 La. 342.

¹³⁶White Hall Agr. Co. et al. v. Police Jury of Concordia Parish et al., (1911) 128 La. 676.

Also, the police jury has no authority to delegate its power of promulgation; it must perform this duty itself.¹³⁷ Whenever a promulgation is contested and there is the claim that the attack is prescribed, the term of prescription must begin with the date of promulgation which is legally accepted, and when the police jury has recognized one date of promulgation it can scarcely be heard to claim another.¹³⁸

In answer to the charge that a tax ordinance failed to specify the term, or designate the year, or years, for which the tax was to be levied, the court gave interpretation to the governing statute--sections 3 and 5 of Act No. 131 of 1898, as amended and re-enacted by Act No. 145 of 1904--as follows:

Construing the two sections together, we interpret them to mean that, immediately upon obtaining the authority of the taxpayers, by means of the special election, it was the duty of the police jury to levy the special tax so authorized, for the period of time specified in the petition of the taxpayers, with designation of the years included in such period; and thereafter, annually, in conformity with section 5, to levy and collect the tax for each of the years so designated. It would, of course, be impossible to hold that the police jury are not required to conform to the law, since they have no authority to act in the premises, at all, save to the extent, and in the manner, that the law authorizes.¹³⁹

Since it was sustained that the ordinance was lacking in the respects alleged, the court decreed it void and of no effect.

Failure of tax consequent to failure of purpose.

The effect which the abolition of a district has upon the levy

¹³⁷Ibid., 128 La. 668, 55 So. 11.

¹³⁸Ibid.

¹³⁹Polse et al. v. Police Jury and School Board of Iberville Parish, (1911) 128 La. 1086.

which its taxpayers have authorized was established in 1911.¹⁴⁰ After the school board of Sabine Parish had consolidated three school districts into one high school district, it found that the ten-mill special levy voted would not be sufficient but failed in the passage of an additional five-mill tax necessary for support. The board, finding itself without the necessary funds for carrying out the high school project, and under implied authority of the act¹⁴¹ which empowered it to create the district, rescinded its action of creation. However, it attempted to continue collecting the voted ten-mill levy until legally enjoined from so doing. The court pointed out that the power to abolish the district carries with it as a necessary consequence the power to abolish the tax, since the tax remains without an object after the school district has been abolished and that a tax without an object is a legal impossibility. Thus, it was established that where a district has been dissolved, the special tax levied for it fails and must not be collected; otherwise, the proceeds would accumulate in the treasury from year to year without its being possible to put them to any use.

The Law Governing the Issuance of Bonds for School Purposes

Since the beginning of the present century the issuance of bonds for "acquiring lands for building sites and

¹⁴⁰Moore v. Board of Directors of Sabine Parish, (1912) 131 La. 757, 60 So. 234.

¹⁴¹Acts of Louisiana, 1902, No. 214, sec. 15.

playgrounds, and for purchasing, erecting, enlarging or improving school buildings and teachers' homes, and acquiring the necessary equipment and furnishings therefor"¹⁴² has become an established practice.¹⁴³ The parish school boards, as they are authorized by the law and directed by the qualified voters of their respective territories, are the governing bodies in bond issuing procedures.¹⁴⁴ How significant this phase of educational finance has become is shown by the facts that the state sold only \$262,673 worth of such bonds in 1910-1911 as compared with \$4,533,749 in 1929-1930, and that in 1931-1932 her total indebtedness for outstanding bonds was \$28,076,286.¹⁴⁵

Constitutional authority. The constitutionality of school bonds in general and of the accompanying tax levy was attacked in 1913.¹⁴⁶ The court, in establishing the validity of the bonds and in answer to the contention that article 281 of the Constitution of 1898 did not authorize school districts to incur debt and issue bonds at all, presented article 281 as originally enacted, and explained the successive amendments proposed through Acts Nos. 186 of 1904, 122 of 1906, and 197

¹⁴²Constitution of Louisiana, 1921, art. 14, sec. 14(b).

¹⁴³Opinions of the Attorney General of Louisiana: May 1, 1908, to May 1, 1910, pp. 280, 364; May 1, 1930, to April 30, 1932, p. 471.

¹⁴⁴Ibid.: May 1, 1924, to May 1, 1926, p. 479; May 1, 1930, to April 30, 1932, p. 474.

¹⁴⁵State Department of Education of Louisiana, Eighty-fourth Annual Report, for the Session 1932-33, pp. 14-15.

¹⁴⁶Board of Directors of Public Schools of Parish of Lincoln v. Ruston State Bank, (1913) 133 La. 109, 62 So. 492.

of 1910. The act of 1906 added school districts to the list of districts that might avail themselves of the opportunity to issue bonds; the act of 1910 amended to the extent that the article was practically recast. Since many of the contested points in bond issues have foundation or explanation in the revision according to the 1910 act, the part pertaining to the authorization of bonds and their accompanying tax levy is quoted in full, as by the court:

Municipal Corporations, parishes or school, drainage, subdrainage, road, navigation, "or sewerage districts, the City of New Orleans excepted, herein-after referred to as subdivisions," when authorized to do so, by a vote of a majority in number and amount of the property taxpayers, qualified to vote under the Constitution and laws of this State, who vote at an election held for that purpose, after due notice of said election has been published for thirty (30) days in the official journal of the municipal corporation or parishes, and where there is no official journal, in a newspaper published therein, may "through their respective governing authorities," incur debt and issue negotiable bonds therefor, and each year while any bonds issued to evidence said indebtedness are outstanding, the governing authorities of such subdivision shall levy and collect annually, in excess of all other taxes, a tax sufficient to pay the interest, annually or semi-annually, and the principal falling due each year, or such amount as may be required for any sinking fund provided for the payment of said bonds at maturity provided, that such special taxes, for all purposes, shall not in any year exceed ten (10) mills on the dollar of the assessed valuation of the property in such subdivisions.

No bonds shall be issued for any other purpose than that stated in the submission of the proposition to the taxpayer, and published for thirty (30) days as aforesaid, or for a greater amount than that therein mentioned; nor shall such bonds be issued for any other purpose than for constructing, improving and maintaining public roads and highways, paving and improving streets, roads and alleys, purchasing or constructing systems of waterworks, sewerage, drainage, navigation, lights,

public parks and buildings, together with all necessary equipments and furnishing, bridges and other works of public improvement, the title to which shall rest in the subdivision creating the debt, as the case may be; . . .¹⁴⁷

The conclusion of the court was that school districts have constitutional authority to incur debt and issue bonds.

Although the issuance of bonds is recognized as a constitutional privilege, an issue is valid only as long as it meets the requirements of the constitution under which it was made. By 1921 there was no constitutional specification of the limit of special taxes to be levied for bonds. Charges presented in 1928¹⁴⁸ were against the attempted levying of a special property tax of two mills in addition to an admitted ten-mill special property tax to pay certain bonds issued in 1920. The court's decree upheld the plaintiffs' contention and there was the explanation that since the bonds were issued under the authority of the Constitution of 1913,¹⁴⁹ which specified a ten-mill limit, that limit continued with the bonds in question.

Unconstitutionality of bonds based on a tax levy for another purpose. The right and duty of the legislature to provide for the administration of the issuance of bonds is recognized constitutionally, but its enactments must not be in conflict with the constitution. One act dealing with bonds

¹⁴⁷ Constitution of Louisiana, 1898, art. 281, as amended by Act No. 197 of 1910, adopted November, 1910.

¹⁴⁸ Tremont Lumber Co. v. Bond et al., (1928) 166 La. 125, 116 So. 723; Tremont & Gulf Railway Co. v. T. H. Bond et al., (1928) 166 La. 128, 116 So. 724.

¹⁴⁹ Constitution of Louisiana, 1913, art. 281.

seems to have been the cause of much confusion and misunderstanding. This was Act No. 84 of 1906 which authorized parishes, municipal corporations, and parish boards of school directors, Orleans Parish excepted, to issue bonds for certain public purposes to be secured by special taxes voted under article 232 of the Constitution of 1898. That article provided for special taxes to give additional support to public schools and to meet the cost of the construction of public schoolhouses when voted by a majority of the property taxpayers of the school district.

In several cases the unconstitutionality of this act was alleged, but it was not acted upon by the court because of various technical errors in the presentation of the contention.¹⁵⁰ Finally, in May, 1911, the attack was properly presented to the court. The objection which was charged was that the act conflicted with article 281 of the Constitution of 1898 which alone authorized the issuance of bonds by school districts.¹⁵¹ After presenting the pertinent parts of each article, the court gave the comparison:

Construing these provisions as parts of the same instrument, it is clear that, although article 232 permits property owners by a majority vote to impose taxes on their property to an unlimited extent, for the support of schools and the building of schoolhouses and other works of public improvement, article 281 confers upon the corporations and quasi corporations, of which such property owners may be members, the power to incur debt and to issue bonds by an affirmative grant, which implies that they would not possess that power unless

¹⁵⁰Folse et al. v. Police Jury et al., (1910) 125 La. 603, 51 So. 658; Waggner et al. v. Police Jury of Parish of Jefferson et al., (1910) 125 La. 863, 51 So. 1016.

¹⁵¹Folse et al. v. Police Jury and School Board of Iberville Parish, (1911) 128 La. 1080, 55 So. 681.

it was so conferred, and which power, as thus conferred, is restricted and regulated in several important particulars, so that no one could reasonably argue that the power of the corporations and quasi corporations to incur debt and issue bonds is as broad as the power of the property owners to impose taxes on their property.¹⁵²

Continuing, it showed the conflict of the act in question as follows:

The Act No. 84 of 1906 appears, however, to ignore that difference, and purports to confer on "parishes, municipal corporations and parish boards of school directors" the power to fund into bonds the proceeds of all taxes which the taxpayers may impose upon their property under article 232 of the Constitution; and, as that article does not purport to deal with the questions of the incurring of debt and the issuing of bonds by such bodies, and hence imposes no restrictions with regard thereto, neither does the act impose any restrictions, save that it limits the interest on the bonds which it authorizes to be issued (up to the amount to be realized from the special tax, whatever that amount may be) to 5 per cent., requires the interest to be paid annually, or semiannually, and requires that the special tax shall be dedicated to their payment and shall not be diverted until they are paid.¹⁵³

Therefore, it was concluded that Act No. 84 of 1906 was in irreconcilable conflict with the constitution and void. In general, this meant that bonds could not be issued upon the basis of a special tax authorized by the taxpayer, but that the issuance of bonds must be according to controlling organic law.

Necessity for legal creation of district. Prior to the issuance of bonds the school district must have been definitely created and identified as such. In article 281 of

¹⁵²Ibid., 128 La. 1088.

¹⁵³Ibid., pp. 1088-1089.

the Constitution of 1913 school districts are expressly named as authorized to issue bonds, and under an act of 1912¹⁵⁴ the school board has authority to divide a parish into school districts with limits fixed as its discretion deems best. However, the mere conferring of the power upon the school board does not within itself create districts--definite action must have been pursued and records made to establish the fact that a territory is a school district. In one contest¹⁵⁵ on this point the court admitted that the term, "district," is broad enough to include a ward, in the sense that the limits of a school district may be as extensive as those of a ward, but explained that a police jury, or justice of the peace, or municipal ward, cannot possibly be brought within the meaning of the term, "school district," and emphasized that it is the "school district" which is authorized to issue bonds.

In another case the court decreed of no effect the election held in, and the bonds issued by, an illegally created district. The districts involved overlapped existing districts within the parish; districts thus located were held to be violative of section 2 of Act No. 152 of 1920.¹⁵⁶

When the validity of bonds has been questioned, the court has placed upon the defendant school board the responsibility of proving the legal creation of the district which

¹⁵⁴Acts of Louisiana, 1912, No. 214, sec. 13.

¹⁵⁵Hemler v. Richland Parish School Board, (1917) 142 La. 133, 76 So. 585.

¹⁵⁶Hinton et al. v. Winn Parish School Board, (1924) 155 La. 666, 99 So. 523.

it was upholding;¹⁵⁷ on the other hand, plaintiffs have been held responsible for proving the illegality of creation after they had recognized the district in their petition.¹⁵⁸

Valid purposes for bond issues. The court's theory seems to have been that since laws authorizing a debt to be created against the taxpayer, or his property to be taken, without his consent, are in derogation of common right, they are to be construed strictly. In 1913 legal sanction was given to the issuance of bonds for the purpose of financing the construction and equipment of an agricultural and domestic science building and for purchasing a site for it. The court held that this purpose, "school buildings," was sufficiently implied in the statute authorizing the issuance of bonds and that the authority for construction necessarily carried with it the authority to buy the site.¹⁵⁹ Again, in 1922,¹⁶⁰ the school building was decreed as a valid purpose for a bond issue.

Adherence to the law in the opposite sense--that is, in forbidding bond issuance for an unauthorized purpose--was upheld by the court¹⁶¹ in its refusal to recognize the purchase

¹⁵⁷Hemler v. Richland Parish School Board, (1917) 142 La. 133, 76 So. 585.

¹⁵⁸Milton et al. v. Lincoln Parish School Board, (1922) 152 La. 761, 94 So. 386.

¹⁵⁹Board of Directors of Public Schools of Parish of Lincoln v. Ruston State Bank, (1913) 133 La. 109, 62 So. 492.

¹⁶⁰Milton et al. v. Lincoln Parish School Board, (1922) 152 La. 761, 94 So. 386.

¹⁶¹Hemler v. Richland Parish School Board, (1917) 142 La. 133, 76 So. 585.

of an agricultural farm as a valid basis of a bond issue. There was the explanation that the levying of taxes for such purposes was granted neither by article 281 of the Constitution of 1913, authorizing bond issues, nor by article 232 of the same constitution, providing for giving additional support to public schools. The principles of agriculture as a required subject¹⁶² was interpreted to have reference to the theoretical part as contained in the school books, and this requirement was held to be no more justification of the issuance of bonds to purchase an agricultural farm than the teaching of zoology would justify the purchase of a zoo for instructional purposes. In the court's expression of its views there was nothing to indicate that it did not see the merit of highly specialized equipment for public school instruction; it merely stated, "The time may come when these extensions will be included in our public school system but it has not yet arrived."¹⁶³

Limitations pertaining to bond issues. The bond issue article of the Constitution of 1898 as amended in 1910¹⁶⁴ provided that the governing authority issuing bonds should levy and collect annually in excess of all other taxes a tax sufficient to pay the principal and interest falling due each year, such special taxes not to exceed in any year ten mills on the

¹⁶² Acts of Louisiana, 1910, No. 306, sec. 1.

¹⁶³ Hemler v. Richland Parish School Board, (1917) 142 La. 137.

¹⁶⁴ Constitution of Louisiana, 1898, art. 281, as amended by Act No. 197 of 1910, adopted November, 1910.

dollar of the assessed valuation. This provision was legalized in 1913 in the decree that there was no violation in a levy of seven and one-half mills laid for such purposes, although there was in existence a five-mill tax for schools levied under article 232. The bond issue provision was held not affected by a levy under another organic authorization.¹⁶⁵ The regulations of the amendment were continued through incorporation in the Constitution of 1913.¹⁶⁶ The annual bond issue levy on this basis was not affected by the constitutional amendments of 1918 delimiting special taxes, for, as interpreted by the attorney general, the first of the amendments specifically excepted a levy for this purpose, and the second dealt with taxes authorized under another article of the constitution.¹⁶⁷

Before the passage of the 1910 amendment electors were duly authorized to specify the annual levy at the time they authorized the issue. When as a result of increase in the valuation of the property, this levy produced a surplus sufficient to retire the bonds, the authorities were advised to discontinue the levy although the term had not expired--the purpose of the levy had been served and the fund could not be diverted.¹⁶⁸ However, in the instance of a surplus accu-

¹⁶⁵Board of Directors of Public Schools of Parish of Lincoln v. Ruston State Bank, (1913) 133 La. 109, 62 So. 492.

¹⁶⁶Constitution of Louisiana, 1913, art. 281.

¹⁶⁷Ibid., as amended by Acts Nos. 191 and 218 of 1918, adopted November, 1918; Opinions of the Attorney General of Louisiana, May 1, 1918, to May 1, 1920, p. 478.

¹⁶⁸Opinions of the Attorney General of Louisiana, May 1, 1910, to May 1, 1912, p. 466.

mulated on an issue authorized after the 1910 enactment, the governing officials were told that they had violated the law in specifying an annual levy--that had the "sufficient amount" been laid each year there would have been no surplus. As a solution for the situation, they were advised to apply the surplus to payment of the first bonds that matured and to modify the method of levying so as to provide only the amount needed annually.¹⁶⁹

The amount of bonds which a district may vote upon itself is regulated by the constitution of the state--the maximum must not exceed ten per cent of the assessed valuation of the taxable property of the school district according to the current assessment.¹⁷⁰ This provision was the basis of an attack on a proposed bond issue of \$60,000. Evidence substantiated the valuation of all the property within the district to be \$710,000. Consequently, the court held the amount of issue as clearly within the constitutional limits.¹⁷¹

Interpretations of bond elections. Many controversies on various phases of the bond election seem to have been brought both to the courts and to the attorneys general of the state. Some of the adjudications based thereon have been merely that there must be compliance with the governing statute; in other cases the decision has depended almost entirely on

¹⁶⁹Ibid., May 1, 1914, to May 1, 1916, p. 390.

¹⁷⁰Constitution of Louisiana, 1921, art. 14, sec. 14(f).

¹⁷¹Gauthier et al. v. Parish School Board of Parish of Avoyelles, (1928) 165 La. 258, 115 So. 479.

the court's view of the point in contest. The following are those which seem to be the chief laws on this subject as thus established.

The official publication of the voting date for thirty days prior to the time of the election is an essential feature.¹⁷² In fact, this notice "is so indispensable that the absence of it is not a mere irregularity, but a nullity."¹⁷³ On the other hand, harmless errors, such as the use of the wrong year in the notice when there were several indications of the correct date, have received no consideration in determining the validity of the election.¹⁷⁴ The designation of certain small settlements as polling places without naming any particular house or lot is sufficient notice of place of election where it is not shown that this method resulted in confusion for anyone who wished to vote.¹⁷⁵

Upon the registrar of voters rests the responsibility of furnishing the official list of voters for a bond election. When the law required merely that the registrar should furnish such list, the attack that the list was not signed by the registrar but by one who prepared it and signed as "deputy registrar" received no consideration from the court

¹⁷²Opinions of the Attorney General of Louisiana, May 1, 1918, to May 1, 1920, p. 478.

¹⁷³St. Landry Parish School Board v. Larcade, (1921) 148 La. 735.

¹⁷⁴Ibid., 148 La. 733, 87 So. 728.

¹⁷⁵Bradford et al. v. Grant Parish School Board, (1923) 154 La. 242, 97 So. 430.

after it was determined that no harm had resulted therefrom.¹⁷⁶
 The governing statute declared as follows in regard to such irregularities:

No defect or irregularity in or omission from the list of voters furnished by the registrar of voters hereunder shall affect the validity of the election, unless it be established that voters were thereby deprived of votes sufficient in number and amount to have changed the result of the election.¹⁷⁷

Whenever the registrar examines a list prepared by another--for example, an abstracter--then makes the necessary corrections and additions, and signs it, his signature is considered as sufficient evidence of his approval and such action is held to comply with statutory requirements.¹⁷⁸

The qualification of residence of those who vote at bond elections is that required by the statute in force at the time. A voter who spends a considerable part of his time within a precinct and retains his citizenship there is entitled to vote at an election therein, although he may remain the greater part of the time outside the precinct.¹⁷⁹ The time limit of residence must be that required by statute, but the territorial limits of a voting precinct for a bond election may vary at the discretion of the governing board, for in that body's power to name polling places is implied the power

¹⁷⁶ Ibid.

¹⁷⁷ Acts of Louisiana, Extra Session, 1921, No. 46, sec. 14.

¹⁷⁸ Sylvestre et al. v. St. Landry Parish School Board, (1927) 164 La. 204, 113 So. 818.

¹⁷⁹ Opinions of the Attorney General of Louisiana, May 1, 1922, to May 1, 1924, p. 461.

to define the precincts therefor. He who has the required residence in the territory of the improvised precinct is entitled to vote, even if the polling place is outside his police jury precinct.¹⁸⁰ This applies only when the polling place is within the parish in which one has residence, for neither is the school board empowered to create a precinct composed of parts of two parishes nor is the voter permitted to leave his parish to vote.¹⁸¹

Several occurrences at the polls have been upheld, condemned, or treated as minor irregularities. With respect to the oath of commissioners, one decree was: "The failure of the commissioners to take an oath before the proper officer, or to take one at all, will not vitiate an election; it is a mere irregularity."¹⁸² The statement on the ballot of a proposition to levy a special tax for the issuance of bonds is considered single and to be voted for or against as a whole.¹⁸³ The court pointed to the error of submitting such a question in two propositions thus:

While it is true as an abstract proposition that the tax may have been authorized without the bond issue, such a tax without a bond issue would have defeated the purpose of the taxpayers to provide funds for the immediate construction of a high school building.¹⁸⁴

¹⁸⁰Sylvestre et al. v. St. Landry Parish School Board, (1927) 164 La. 204, 113 So. 818.

¹⁸¹Milton et al. v. Lincoln Parish School Board, (1922) 152 La. 761, 94 So. 386.

¹⁸²Bradford et al. v. Grant Parish School Board, (1923) 154 La. 242, 97 So. 430.

¹⁸³McWilliams et al. v. Board of Directors of Iberville Parish et al., (1911) 128 La. 422, 54 So. 928.

¹⁸⁴Ibid., 128 La. 425.

Advice relative to the content of the proposition for a bond issue has been to the effect that it must state with regard to the debt: the object, the number of years it is to run, and the rate of interest.¹⁸⁵ He who votes must own the property voted at the time of the election.¹⁸⁶ One who does not know how to sign the ballot may vote a valid ticket by having his vote properly signed by another in his presence.¹⁸⁷

A bond issue requires for its passage the affirmative majority vote of both the qualified taxpaying electors and of the valuation of the property voted. The policy of the court has been to decide upon the validity of contested votes when a change in the status of those votes could in any way affect the results of the election. In the Milton case corrections by the court changed the results to the extent that a question which had been announced as having carried was pronounced as defeated.¹⁸⁸ On the other hand, the validity of contested votes has not been passed upon when those votes were so small in number and property valuation and so cast that the results of the election would have remained the same regardless of the decision about the validity of the various votes.¹⁸⁹ The

¹⁸⁵Opinions of the Attorney General of Louisiana, May 1, 1916, to May 1, 1918, p. 320.

¹⁸⁶Bradford et al. v. Grant Parish School Board, (1923) 154 La. 242, 97 So. 430.

¹⁸⁷Ibid.

¹⁸⁸Milton et al. v. Lincoln Parish School Board, (1922) 152 La. 761, 94 So. 386.

¹⁸⁹Bradford et al. v. Grant Parish School Board, (1923) 154 La. 242, 97 So. 430; Sylvestre et al. v. St. Landry Parish School Board, (1927) 164 La. 204, 113 So. 818.

failure of the board to execute the formal process verbal at the time the returns are canvassed and promulgated does not annul the election. Mandamus would lie to compel the board to perform such duty but only after the failure to perform in the time stated.¹⁹⁰

Legal limitations of complaints. Persons who vote for bond issues have no right under the law to complain later of illegalities therein.¹⁹¹ The legal policy in this respect has been thus explained:

This court has often recognized, as a sound principle, that it would be inequitable and unjust to the public to allow one who has voted or petitioned for the levy of a special tax to complain afterwards that the proceedings were illegal.¹⁹²

Before a parish school board determines the tax levy necessary for a certain year to pay the principal and interest falling due, complaints that the tax is excessive cannot be considered.¹⁹³

When bids to purchase school bonds have been accepted by the school district as a contract, the law compels the purchaser to comply with his bid. The purchaser's right to refuse compliance on the basis of illegalities involved is granted, of course, but in that, even, there must be conformity to the law. Thus, did the court reason in a case on this issue where the bidder for the bonds did not bring his charges within the

¹⁹⁰Bradford et al. v. Grant Parish School Board, (1923) 154 La. 242, 97 So. 430.

¹⁹¹Frazier et al. v. Board of Directors of Public Schools of Parish of Franklin, (1923) 153 La. 1083, 97 So. 199.

¹⁹²Ibid., 153 La. 1086.

¹⁹³Gauthier et al. v. Parish School Board of Parish of Avoyelles, (1928) 165 La. 256, 115 So. 479.

sixty days prescribed for that purpose and thereby lost the opportunity of rescinding his purchase.¹⁹⁴

Prescription on bond elections. Legal provision which would make bonds secure after a reasonable length of time--that is, by prescription--is but fair to those who issue them and those who buy them. In the absence of such provision a bond election is definitely promulgated only after it has been adjudicated by the court. The number of protests which have reached the courts is clearly indicative of the need for clarification of the law by fundamental provision rather than by supreme court decisions.

In a case of 1923¹⁹⁵ the court took opportunity to review the development which led to the prescriptive provisions of the 1921 Constitution with respect to bond issues; according thereto the following were the chief contests and legislative measures which seem to have prompted organic action on this question. In 1909 a bond issue for a certain railway enterprise was declared null and the collection of the taxes was thereby forbidden after a lapse of more than two years from the date of election and after the railway was in operation. In this connection, the court said: "Thus the railroad did not get its taxes; but the people of the 'police jury ward' got the railroad, since it could not move away."¹⁹⁶ The next

¹⁹⁴St. Landry Parish School Board v. Larcade, (1921) 148 La. 733, 87 So. 728.

¹⁹⁵Roberts et al. v. Evangeline Parish School Board, (1923) 155 La. 331, 99 So. 280.

¹⁹⁶Ibid., 155 La. 334.

year the legislature attempted to prevent such occurrences in the future by providing a prescriptive term of sixty days from date of promulgation of the election.¹⁹⁷ Recognition of this statute by some court cases and disregard of it by others when the constitutionality of a tax was involved were pointed out. Although it was not included in the court's summary, another ruling in point was when the plaintiffs contesting a school bond election in 1921 were met with the decree that they had delayed too long in bringing their charges against an election held in January, 1919.¹⁹⁸ With respect to the problem which thus confronted the Constitutional Convention of 1921 and its action thereon, the 1923 court said:

It was in this condition of uncertainty, and of vacillation on the part of the court, that the convention of 1921 met. It was as well known to the members of that convention as it is to the members of this court that no bond issue by any public body in this state could be negotiated unless and until this court has passed finally upon that particular bond issue; as fully appears from correspondence in this transcript and in others that have come before us.

Accordingly, that body, which alone had power to give jurisdiction or withhold it from the courts, adopted paragraph (n) of section 14, art. 14, aforesaid. And that paragraph, in terms too plain to be mistakable, clearly withholds jurisdiction from the courts of this state after 60 days.

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The Constitution therefore declares in plain terms that after 60 days the bonds and taxes shall be conclusively held to be valid, that no one shall have the right to question their validity, that no court shall have authority to entertain any controversy over their validity.

¹⁹⁷Acts of Louisiana, 1910, No. 256, sec. 17.

¹⁹⁸St. Landry Parish School Board v. Larcade, (1921) 148 La. 733, 87 So. 728.

And it seems to us that language could not be used to express more strongly the very patent intention of the constitutional convention, to wit, that after 60 days have elapsed without any attack upon a bond issue and tax voted by property taxpayers under color of law, any person may safely purchase such bonds and feel secure that the taxes levied to pay them will be sustained by the courts of this state. The constitutional convention had the right to say this; it did say it, and that is the end of the matter.¹⁹⁹

This review of the development of prescription as a measure of safety came by way of explanation when a majority of the supreme court sustained the plea of prescription made by a defendant school board to bar the action of plaintiffs whose suit against an election and bond issue was brought more than sixty days after the promulgation of the results of the election.²⁰⁰ Thus, it seems that the provisions for protection and permanence of special levies and bonds were not satisfactorily made until the action by the Constitutional Convention of 1921, but that the organic law which came into existence thereby is unhesitatingly recognized by the courts as a definite means to prevent the jeopardizing of the bonding interest of the state.

SUMMARY

School funds authorized by the taxpayers have contributed a large portion of the revenue for the support of public education. The underlying principles governing this

¹⁹⁹Roberts et al. v. Evangeline Parish School Board, (1923) 155 La. 336-337.

²⁰⁰Ibid., 155 La. 331, 99 So. 280.

special type of school fund appear to be the following:

1. Local autonomy in the support of public education has been a legalized principle in the state for more than a century.

2. Since 1879 the organic laws of the state have provided for special school tax levies at the discretion of the qualified voters of a district, and consistently the courts have upheld the constitutionality of such levies.

3. That the people of Louisiana believe in special revenues for the maintenance of public schools is evidenced by the fact that this type of support for the year 1930-1931 amounted to \$6,047,128.

4. A local district has the right to tax itself for the support of junior college work as a part of the program of public education; this was established by the courts in 1932.

5. In the levying of special taxes districts are considered as separate and distinct entities.

6. The controlling statutory requirements must be met in levying and collecting the voted tax.

7. A special tax levy may be authorized any time during the year.

8. Those who are eligible to vote in a special tax election are those who meet the general voting requirements of the state and who are property taxpayers at the time of the election.

9. A reasonable opportunity to register preparatory

to a special election is considered sufficient compliance with the law.

10. A special tax election is considered carried only when it receives a majority of both the votes and the property correctly voted.

11. Mere errors in the judgment of commissioners are not sufficient grounds alone for invalidating an election.

12. The parish school board has a right to order a special school tax election without a petition from the voters, but when a petition is presented by the legally required number of qualified voters, the board must order the election.

13. Elections may be contested but only on specific grounds and within the prescriptive period in force at the time.

14. Funds raised by special tax levies in a particular district must be spent as the voters have directed, and in the event of unforeseen irregularities the expenditure must be as the law prescribes.

15. A school board may issue certificates of indebtedness for building purposes where the special tax therefor has already been voted.

16. Irregularities which seem to have been considered sufficient to invalidate a proposed tax levy are: (a) ill-defined voting districts; (b) failure to observe the constitutional maxima for various levies; (c) ambiguous statements of the purpose; (d) failure of the petition to

specify the amount necessary to be realized from the tax annually; (e) minority board proceedings in the issuance of the resolution calling a special election; (f) inconsistencies in petitions, resolutions, and notices; (g) failure to designate definitely the place and time of an election; (h) lack of compliance with the law in the choice of election officials; (i) the opening and closing of polls irregularly to the extent that voters are prohibited from exercising the suffrage right sufficient to change the results of the election; (j) use of an incorrectly prepared list of voters; (k) use of incorrect form of ballot when there is a form prescribed by statute; (l) determining the amount of property voted by inference rather than by valid statements from the voter; (m) incorrect decisions by commissioners regarding ownership of property to the extent that correction thereof would change the results of the election; (n) promulgation by an authority other than the police jury; (o) significant omissions in the levying ordinance; (p) attempt of a school board to continue collecting a tax after the district has been abolished.

17. The bond issue as a means of support of public education has become a significant move of the present century, as is shown by its rapidly increasing use.

18. Taxpayers may vote bond issues upon themselves for the purpose of building schoolhouses and teachers' homes, and purchasing the necessary grounds and equipment therefor.

19. Bonds for school purposes have constitutional

authority and an issue continues to be governed by the provisions of the constitution under which it was voted.

20. Bonds issued on a tax levied for another purpose are null and void and the statute proposing to authorize such action is considered unconstitutional.

21. The legal creation of a district is a prerequisite to a bond issue.

22. Strict interpretation of the law seems to govern the purposes for which bond issues are sanctioned.

23. The amount of bonds a district may issue is based on the assessed valuation of the property and the limitation as fixed by the constitution. The annual levy is determined by the governing authority on the basis of what is necessary to produce the principal and interest falling due.

24. The failure to make public the voting date thirty days prior to the election invalidates a bond issue.

25. The required qualifications of those who participate in bond elections are determined by the laws of the state.

26. Precincts may be improvised at the discretion of the school board, but the arrangement must not require voters to go into another parish.

27. A bond issue to be valid must receive a majority vote of both the qualified taxpaying electors and of the valuation of the property voted.

28. Minor irregularities such as the failure of commissioners to take the oath of office will not vitiate an

election unless it can be shown that results were changed thereby.

29. Persons who vote for a bond issue have no right under the law to complain later of irregularities therein.

30. Protection and permanence of special levies and bond issues are attempted to be provided for through prescription which denies recognition of complaints after the expiration of a specified period.

CHAPTER VII

EDUCATIONAL CONTROL BY NONPROFESSIONAL AGENCIES

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The interpretation of the Federal Constitution and of other legal documents, as presented in the previous chapters, shows conclusively that education is one of the reserved powers of the state. Since the state has the right to establish and maintain a system of free public schools, it may reasonably be assumed that the state is empowered to provide for the necessary agents to execute properly that function of government and to entrust to them the organization and administration of the state's program of public education. The functioning of such officials, from the local trustees of a small school to the legislature in its relation to public education, is influenced by the court's interpretation of the law. The purpose of this chapter is to show what effect those adjudications have had in shaping the policies of control pursued by the non-professional agencies of public education.

POLITICAL AGENCIES

The Legislature

The legislature is the principal agency through which the state executes the mandates of the organic law providing

for the establishment and maintenance of a public school system.¹ In the absence of constitutional restrictions the "legislature may determine the types of schools to be established throughout the state, the means of their support, the organs of their administration, the content of their curricula, and the qualifications of their teachers."²

That the lawmakers of early Louisiana held similar views is evidenced by their provisions for public schools³ long before the organic law sanctioned education as a function of government.

Constitutional mandates and restraints. In 1845 the legislature was directed by the constitution to create a system of free public education.⁴ At the same time it was authorized to prescribe the duties and emoluments of the state superintendent's office⁵ and by the Constitutions of 1852⁶ and 1864⁷ it was given discretionary power to abolish

¹Hermann H. Schroeder, Legal Opinion on the Public School as a State Institution (Bloomington, 1928), p. 35.

²Newton Edwards, The Courts and the Public Schools (Chicago, 1933), pp. 5-6.

³Acts of Louisiana: 1819, "An Act to amend the several laws enacted on the subject of Public Schools within this State, and for other purposes," pp. 52-54; 1820-21, "An Act to extend and improve the system of Public Education in the State of Louisiana," pp. 62-68; 1827, "An Act to provide for the support and administration of parish schools and for other purposes," pp. 80-88; 1833, "An Act supplementary to the several acts relative to Public Education," pp. 141-144.

⁴Constitution of Louisiana, 1845, art. 134.

⁵Ibid., art. 133.

⁶Ibid., 1852, art. 135.

⁷Ibid., 1864, art. 140.

said office. In 1879 the general assembly was authorized to provide for the creation of parish school boards who were to provide for parish superintendents at a salary not to exceed two hundred dollars annually,⁸ while in 1898 it was directed to provide for a state board of education.⁹

Another aspect of indirect control by organic law is the restraint placed upon legislative enactments. For example, in 1845 the constitution limited the controlling power of the legislature with respect to support by requiring that the proceeds from school lands remain a trust fund and providing that only the income might be used for public schools;¹⁰ in 1864 it prohibited the support of any private school by public funds,¹¹ while in 1879 schools of a sectarian nature were added to the prohibited list.¹²

Delegation of powers. The Supreme Court of the United States has held that "one of the highest attributes and duties of a legislature is to regulate public matters with all public bodies, no less than the community, from time to time, in the manner which the public welfare may appear to demand."¹³ One method which the legislature has used in regulating public school matters with public bodies

⁸Ibid., 1879, art. 225.

⁹Ibid., 1898, art. 250.

¹⁰Ibid., 1845, art. 135.

¹¹Ibid., 1864, art. 146.

¹²Ibid., 1879, art. 228.

¹³The Town of East Hartford, Plaintiff in Error, v. The Hartford Bridge Company, (1850) 10 How. 534.

has been to delegate to those bodies certain designated powers. For example, the court has recognized that the power of taxation has been delegated largely to local authorities--the school directors and the police juries.¹⁴ The qualified voters themselves possess the sole power of levying special taxes for school purposes.

Police Juries

In the early history of the state these corporate bodies were empowered by the legislature to assume control of the public schools in their respective parishes.¹⁵ Later this power was partially transferred to parish school boards who were appointed by them.¹⁶ In 1847 police juries, in collaboration with the parish superintendents, were given the right to divide parishes into school districts.¹⁷ In 1877 they were authorized by the legislature to levy in their parishes a maximum of two mills for school purposes,¹⁸ and in 1879 organic sanction was given for such levies.¹⁹ The

¹⁴*Villeneuve Bordelon et al. v. Thomas H. & W. B. Lewis*, (1852) 8 La. Ann. 472.

¹⁵*Acts of Louisiana*, 1819, "An Act to amend the several laws enacted on the subject of Public Schools within this State, and for other purposes," secs. 1-3, p. 52.

¹⁶*Ibid.*, 1827, "An Act to provide for the support and administration of parish schools and for other purposes," secs. 2, 5, pp. 80, 82.

¹⁷*Ibid.*, 1847, No. 225, sec. 18.

¹⁸*Ibid.*, Extra Session, 1877, No. 23, sec. 28.

¹⁹*Constitution of Louisiana*, 1879, art. 229.

legislature in 1888 required them to levy at least one and one-half mills on the parish assessment for public education,²⁰ but the Constitution of 1921 raised that amount to three mills.²¹ Also, they were the governing bodies for special tax elections until 1914 when this responsibility was transferred to the parish boards.²² Thus, it may be seen that although they are not considered as educational officials, the police juries of the state have wielded an influence in shaping the policies of educational control.

BOARDS OF EDUCATION

State Board

The people of the various states, through appropriate legislation, have delegated to their boards of education a large share in the making of educational policies. The significance of this practice has been evaluated as follows:

The fundamental character of public education in the United States is, in the last analysis, determined by the board that controls the school. To be sure, back of the board stands the state, but to the board the state has delegated the practical control of public education. Within the wide limits created by legislative enactment, the broad outlines of policy are shaped by the members of this body. . . . To a degree and in a fashion seldom grasped, the content,

²⁰Acts of Louisiana, 1888, No. 81, sec. 54.

²¹Constitution of Louisiana, 1921, art. 12, sec. 15.

²²Acts of Louisiana, 1914, No. 17, sec. 1.

spirit, and purpose of public education must reflect the bias, the limitations, and the experience of the membership of this board. The possibilities which the school possesses as a creative and leavening social agency are set by the good will, the courage, and the intelligence of that membership. The qualitative advance of public education must depend as much on the decisions of the board of education as on the development of the science and philosophy of education.²³

That the public school system of Louisiana was established without organic sanction of this particular type of centralized control is evidenced by the fact that no constitution prior to the War for Southern Independence dealt with the subject of the state board of education.

Constitutional and statutory provisions. This agency of educational control in Louisiana was given legal recognition in 1869, when its personnel was specified as being composed of the state superintendent, one member appointed by the governor from each of the congressional districts, and two members from the state at large, with the power to supervise the school system and to appoint parish and municipal boards.²⁴ As a part of the plan of Reconstruction, this act was amended the next year so as to provide that the membership should consist of the governor, ex officio, the state superintendent, and the six divisional superintendents appointed by the governor; the duties of the board were to include the selection of parish, incorporated town, and village boards of education,

²³George S. Counts, The Social Composition of Boards of Education (Chicago, 1927), p. 1.

²⁴Acts of Louisiana, 1869, No. 121, secs. 1, 9, 10, 22.

and general supervision of the schools of the state.²⁵ In 1877 the personnel of the board changed again to consist of the governor, the lieutenant-governor, the secretary of state, the attorney general, the state superintendent of public education, and two members appointed by the governor.²⁶ In the Constitutional Convention of 1879 an unsuccessful effort was made to embody in the organic law provision for a state board to consist of the governor, the auditor, and the secretary of state.²⁷ However, the next convention granted constitutional approval for a state board whose creation was to be provided for by the legislature.²⁸

The power of this board was expanded by the Burke Bill which added to its duties the control of certification of teachers.²⁹ However, it seems that there were too many ex-officio members, for the Johnson Act provided for a board to consist of the state superintendent and five members appointed by the governor so as to have overlapping terms.³⁰

The Constitution of 1921 reorganized the state board of education and increased its power to control the public schools of the state as follows:

²⁵Ibid., Extra Session, 1870, No. 6, secs. 1-2, 4-5, 16-18.

²⁶Ibid., 1877, No. 23, sec. 1.

²⁷Official Journal of the Proceedings of the Constitutional Convention of the State of Louisiana, 1879, pp. 173-174.

²⁸Constitution of Louisiana, 1898, art. 250.

²⁹Acts of Louisiana, 1912, No. 214, secs. 47-51.

³⁰Ibid., 1916, No. 120, sec. 1.

Section 4. There is hereby created a State Board of Education to be composed as follows: three members to be appointed by the Governor for terms of four years, one each from districts co-extensive with the present Railroad Commission districts, and eight to be elected for terms of eight years, except as herein provided, from districts corresponding to the present Congressional districts. The Legislature shall provide for the organization of said board so that two of the elected members shall be chosen at each Congressional election. The first board shall be elected in 1922 and begin office the second Monday in January, 1923, and the term of two of whom shall expire in two, four, six and eight years respectively.

The members appointed by the Governor shall be persons experienced in educational matters, and all members shall serve without pay, except such per diem and traveling expenses as shall be fixed by the Legislature.

The Legislature shall prescribe the duties of said board and define its powers; provided, that said board shall not control the business affairs of parish school boards, nor the selection or removal of their officers and directors.

.....

Section 6. The State Board of Education shall have supervision and control of all free public schools.

.....

Section 7. . . . It shall prescribe the qualifications, and provide for the certification of the teachers of elementary, secondary, trade, normal and collegiate schools; it shall have authority to approve private schools and colleges, whose sustained curriculum is of a grade equal to that prescribed for similar public schools and educational institutions of the State; and the certificates or degrees issued by such private schools or institutions so approved shall carry the same privileges as those issued by the State schools and institutions.

Section 8. It shall not create or maintain any administrative department in which salaries or expenses are payable from State funds, unless authorized by the Legislature. The Legislature shall

prescribe the terms under which funds offered for educational purposes shall be received and disbursed.³¹

Acting upon this authority, the legislature declared that:

The State Board of Education shall prepare courses of study, rules, by-laws and regulations for the government of the Public Schools of the State, which shall be enforced by the parish superintendents and the several parish school boards.³²

Established power. Seldom has the vested power of the state board of education been questioned seriously enough to demand the attention of the supreme court. Almost immediately after the board was authorized by the legislative acts of 1869 and 1870 a contest involving the allocation of the right of removal of subordinates recognized its power. The law established was that school directors may be removed from office by the state board of education only and that such removal must be preceded by a due hearing and a fair trial on charges of negligence, incompetency, or violation of law.

An illustration of the extended powers of the state board is an opinion by the attorney general in 1930 to the effect that no public high school may be established, or the building therefor be constructed, without the approval and supervision of the state board of public education.³³ In general, it is legally recognized that the state board has broad powers in the development of a program of public

³¹Constitution of Louisiana, 1921, art. 12.

³²Acts of Louisiana, 1922, No. 100, sec. 4.

³³Opinions of the Attorney General of Louisiana, May 1, 1930, to April 30, 1932, p. 402.

education for the state.³⁴

Parish Boards

Legal developments. Parish school boards existed in the state prior to constitutional sanction, for in 1821 police juries were authorized to appoint five trustees to assume supervision of public education in their respective parishes.³⁵ Six years later, these school boards were authorized to select parish treasurers and ward trustees to assist in the organization and administration of public education in the various parishes and wards.³⁶ By 1833 they were required to report regularly to the secretary of state, as state superintendent of public education at that time, the educational conditions of their parishes.³⁷ There was curtailment of their power in 1847 by the transfer of the selection of district trustees to the people living within the parish.³⁸ In keeping with the centralizing policy of control during Reconstruction, the state board of education in 1870 was given the right to select both the parish and

³⁴Ibid., May 1, 1926, to April 30, 1928, p. 284.

³⁵Acts of Louisiana, 1820-21, "An Act to extend and improve the system of Public Education in the State of Louisiana," secs. 1-2, p. 62.

³⁶Ibid., 1827, "An Act to provide for the support and administration of parish schools and for other purposes," secs. 3, 5, pp. 80, 82.

³⁷Ibid., 1833, "An Act supplementary to the several acts relative to Public Education," sec. 4, p. 142.

³⁸Ibid., 1847, No. 225, sec. 20.

the district boards.³⁹ In 1877 the parish school boards assumed the responsibility of certification of teachers and the general control of the public schools of their respective parishes;⁴⁰ in 1879 each was given organic authority to select a parish superintendent of schools who should serve as secretary of the board.⁴¹ Resolutions and petitions were presented to the Constitutional Convention of 1898 recommending "that the Board of Directors of the public schools of each parish" be elected by the voters of the parish.⁴² To some extent this resolution was reflected in the constitution, for provision for the creation of parish boards was left to the legislature.⁴³

In 1912 parish school board members were made elective by the qualified voters from each of the police jury wards, one to be chosen for each police juror in said ward,⁴⁴ and in 1914 the board was made the governing body of all special tax elections for school purposes.⁴⁵

That the parish school boards have been given from time to time increasing opportunity to influence the type of

³⁹ Ibid., Extra Session, 1870, No. 6, secs. 16, 18.

⁴⁰ Ibid., Extra Session, 1877, No. 23, sec. 4.

⁴¹ Constitution of Louisiana, 1879, art. 225.

⁴² Official Journal of the Proceedings of the Constitutional Convention of the State of Louisiana, 1898, pp. 40, 52.

⁴³ Constitution of Louisiana, 1898, art. 250.

⁴⁴ Acts of Louisiana, 1912, No. 214, sec. 5.

⁴⁵ Ibid., 1914, No. 17, sec. 1.

person selected as parish superintendent may be indicated by the salary ranges authorized by statutory and organic law. In 1902 the parish board had the right to pay a superintendent anywhere from \$200 a year to \$1200,⁴⁶ while in 1912 the range was from a \$600 minimum to an unlimited maximum.⁴⁷ Under the Johnson Act that officer might be paid from \$900 to \$4000 per year.⁴⁸ In 1921 the board was given complete freedom in the selection of a parish superintendent with no mention of salary stipulations.⁴⁹

Pertaining to the complete status of the parish school board the Constitution of 1921 authorized:

Section 10. The Legislature shall provide for the creation and election of parish school boards which shall elect parish superintendents for their respective parishes, and such other officers or agents as may be authorized by the Legislature. The State Board of Education shall fix the qualifications and prescribe the duties of parish superintendents, who need not be residents of the parishes. Wherever a parish contains a municipality, the population of which is more than one-half of that of the entire parish, it shall have representation on the parish school board proportionate to its population.

Section 11. Municipal or parish school boards and systems now in existence by virtue of special or local legislative acts are hereby recognized, subject to control by and supervision of the State Board of Education, and the power of the Legislature to further control them by special laws.⁵⁰

⁴⁶Ibid., 1902, No. 214, sec. 35.

⁴⁷Ibid., 1912, No. 214, sec. 27.

⁴⁸Ibid., 1916, No. 120, sec. 27.

⁴⁹Constitution of Louisiana, 1921, art. 12, sec. 10.

⁵⁰Ibid., art. 12.

Composition and selection of personnel. In 1908 the legislature provided that in each parish of the state having a population of less than 50,000 there should be in each ward, "in addition to the police juror to which said ward is entitled, an additional police juror for each 5,000 inhabitants which said ward contains; also, one additional police juror for each additional 5,000 inhabitants or part thereof in excess of 2,500 inhabitants."⁵¹ An act of 1922 provided that there shall be elected by the voters of each police jury ward of the various parishes of the state a member of the school board of the parish for each police juror in said ward and whose term of office shall be six years.⁵² Section 18 of the same act incorporated the organic provisions for the representation of municipalities⁵³ but limited the total parish school board membership to fifteen.

A legal interpretation of the law governing the method of increasing school board membership was sought in 1927.⁵⁴ In the case brought before the court an effort was made to oust a school board appointee who, by virtue of the ward's increased population, was entitled to membership by the provisions of the acts as stated above. The court held that the formal finding of the police jury to the effect that the ward was entitled to an additional school board member by

⁵¹Acts of Louisiana, 1908, No. 279, sec. 1.

⁵²Ibid., 1922, No. 100, sec. 17.

⁵³Constitution of Louisiana, 1921, art. 12, sec. 10.

⁵⁴Thomas et al. v. Doughty, (1927) 163 La. 213, 111 So. 681.

virtue of its increased population gave the person appointed by the governor prima facie right to membership.

In another case⁵⁵ a vacancy had occurred in the Orleans Parish school board and the governor, acting under the law, filled such vacancy by appointment. At the regular Congressional election in November another would-be member was elected for the balance of the unexpired term. Suit was brought by the attorney general and the elected member to oust the member appointed by the governor. The former claimed that under section 64 of Act No. 120 of 1916 the appointment of the latter was for the period before the Congressional election only, and that he--the one chosen by the people at the election--was therefore entitled to the office for the remainder of the regular term. The governor's appointee based his refusal to surrender the office on his having been named under authority of section 1 of Act No. 236 of 1916, which provided that a school board member appointed under such circumstances as in the situation involved was an appointee for the remainder of the term. Since the later statute declared, in section 2, that all laws or parts of laws in conflict with the act were thereby repealed, and since the parish of Orleans was not expressly excepted, the court held that the member appointed by the governor under the later act was the rightful possessor of the office.

⁵⁵State et al. v. Schaumburg, (1921) 149 La. 470, 89 So. 536.

More recently, 1931, the right of the governor to fill vacancies on parish school boards was upheld. The controlling statute states: "All vacancies in the membership of parish school boards caused by death, resignation, or otherwise, shall be filled by appointment by the Governor."⁵⁶ The court established this by declaring as legal office holders the members appointed by the governor when the offices had been rendered vacant by the acceptance of some members of postmasterships and by the failure of another member to qualify within thirty days from the date of his commission.⁵⁷ Other legal counsel has been to the effect that whenever a vacancy occurs, regardless of the cause, the governor has the power to fill it by appointment.⁵⁸

The secretary of the parish board is the parish superintendent by virtue of his office, and, as may be seen from the section dealing with the parish superintendent in Chapter VIII of this study, this officer of the board has been involved in several controversies sufficiently serious to reach the supreme court.

Concerning the president of the board, however, there have been fewer litigations. In 1909 the court had

⁵⁶Acts of Louisiana, 1922, No. 100, sec. 17.

⁵⁷State ex rel. Wimberly v. Barham et al. State ex rel. Gray v. Pipes et al. State ex rel. White v. Mason et al. (1931) 173 La. 488, 137 So. 862.

⁵⁸Opinions of the Attorney General of Louisiana, May 1, 1932, to April 1, 1934, p. 68.

occasion to establish some regulations pertaining to the presiding officer as follows: "The president of the board must be elected from among the members, and the expiration of his term as president is necessarily synchronous with the expiration of his term as a member.⁵⁹ His duties are those of the chairman of any ordinary board, but he does not possess dual voting privileges.⁶⁰

Status of a body corporate. Two years after Louisiana became a member of the Union her supreme court was called upon to determine the legal status of the school board.⁶¹ The plaintiffs' attorney pointed to the corporate existence of the school administrators as provided in the statutory enactments pertaining to public education, thus:

This act enlarges and extends the first act of incorporation to the schools in the different counties, and constitutes them an integral part of the first body corporate, vested with all the privileges, capacities, and powers over the subjects committed to their administration, in as full and perfect a manner as was given to the original institution, and consequently they can proceed in the discharge of their functions in the same manner as the first body corporate can do.⁶²

The cause which had brought interpretation on this subject was a suit by two of the school administrators to recover from the third administrator money which had been borrowed from the school

⁵⁹State ex rel. Wilson v. Hardin, (1909) 123 La. 741.

⁶⁰Opinions of the Attorney General of Louisiana: May 1, 1928, to April 30, 1930, p. 492; May 1, 1932, to April 1, 1934, p. 306.

⁶¹*Paillette et al. v. Carr*, (1814) 3 Mart. (O. S.) 489.

⁶²Ibid., pp. 490-491.

fund for his private use. The borrower contended that action must be taken by the whole board--that two members could not act against the third member. The court held that: "In all bodies corporate, the majority must rule, and there is no doubt that two of the three administrators of this school had a right to sue in the name of the board."⁶³ The immediate outcome was that the third board member was required to return all money borrowed with interest, concerning which the court said:

In a case of this nature, where the deposit of public funds, destined for the most useful of purposes, has been unwarrantably detained--where the obligation to return them at sight has been eluded during such a length of time, it is just that we should allow to the plaintiffs, not only the interest of the money since the judicial demand, but also the full amount of damages which the law permits to give.⁶⁴

Most important was the establishment at this time of the school board as a corporate body in the law and thereby vested with the right of majority rule.

Many years later, 1871, the court had occasion to refer to the fact that the parish board is constituted a body corporate and politic in law, with powers to sue and be sued.⁶⁵

Since the parish school board is a corporate body, one such board may stand in court to recover from another any

⁶³Ibid., p. 495.

⁶⁴Ibid., p. 496.

⁶⁵Third Ward School District of New Orleans v. City Board of School Directors. Van Norden, Treasurer, etc., v. Thomas W. Conway, State Superintendent. Thomas W. Conway, State Superintendent, v. The City Board of School Directors. Van Norden, Treasurer, etc., v. Thomas W. Conway, State Superintendent. (1871) 23 La. Ann. 156.

funds illegally obtained. This principle was established by a case⁶⁶ dealing with the efforts of one school board to recover from another a sum of money which had been paid by the state to the defendant when it should have been paid to the plaintiff. The defendant board had invested the funds in a school lot and building. The court held that the plaintiff board was entitled to recover the money in question, even if it became necessary to seize and sell the property which had been purchased by such funds, and that action to recover under the circumstances was not barred by the prescription of five years or less.

In a legal decision in 1909, which confirmed an appointment to parish superintendency, it was held that parish boards "are corporations, and a corporation is a body which 'continues always the same notwithstanding the change of the individuals who compose it' (Rev. Civ. Code, art. 427)."⁶⁷

That school boards are quasi corporations and that they must stand in court as such were indicated in the White Hall Agricultural Company case,⁶⁸ in which the president instead of the board itself was cited. Chief Justice Joseph A. Breaux referred to decisions previously rendered which were consistent in maintaining that a corporation should be

⁶⁶School Board of East Carroll Parish v. School Board of Union Parish, (1884) 36 La. Ann. 806.

⁶⁷State ex rel. Wilson v. Hardin, (1909) 123 La. 740.

⁶⁸White Hall Agr. Co. et al. v. Police Jury of Concordia Parish et al., (1911) 127 La. 1022, 54 So. 337.

represented in court by its corporate name or by some one designated by law to represent such corporation.⁶⁹

A case in 1927 maintained that the parish school board is a corporate body with power to sue and be sued and that when judgment has been obtained against it by proper procedure, taxpayers have no right to attack that judgment, although the execution of it may involve the sale of the school building to satisfy a creditor's legal rights and demands.⁷⁰

Rank of member as an officer under the state. For many years the parish school board member has been considered an officer under the state.⁷¹ This status was upheld by the court in a combination case which reviewed three court of appeal cases pertaining to dual office holding.⁷² The four-fold purpose of the case, as based on the merits, was to determine:

. . . whether or not a member of a parish school board is an officer under the state within the

⁶⁹State ex rel. New Iberia Telephone Exchange Co. v. Voorhies, Judge, et al., (1898) 50 La. Ann. 671, 23 So. 371; State ex rel. Yazoo & Mississippi Valley Railroad Company v. James A. Montegudo, Justice of the Peace for the Fourth Ward of the Parish of East Baton Rouge, (1896) 48 La. Ann. 1417, 20 So. 911; Gubel v. Town of Lafayette, (1907) 118 La. 494, 43 So. 63.

⁷⁰Hawthorne et al. v. Jackson Parish School Board et al., (1926) 5 La. App. 508.

⁷¹Opinions of the Attorney General of Louisiana: June 1, 1900, to May 1, 1902, p. 111; May 1, 1914, to May 1, 1916, p. 367; May 1, 1920, to May 1, 1922, p. 495.

⁷²State ex rel. Wimberly v. Barham et al. State ex rel. Gray v. Pipes et al. State ex rel. White v. Mason et al. (1931) 173 La. 488, 137 So. 862.

contemplation of section 4 of article 19 of the Constitution of 1921; whether a person may qualify lawfully as a member of the school board while holding the office of postmaster; the effect of accepting and holding a postmastership after one has qualified as a member of a parish school board, and while he is still holding such membership; and the effect of resigning as postmaster upon the right to continue to hold membership on the school board, the resignation being accepted after the institution of an ouster suit, but before the rendition of judgment therein by the trial court.⁷³

In response to the four questions presented, the court analyzed closely the constitutional and statutory provisions and the law previously interpreted by itself.

In determining that the school board member is an officer the court said:

A member of a parish school board is also an officer. He exercises a part, though small, of the sovereign power, in the interest of the public, under authority vested in him by the state. He is elected by the people, save when, by reason of a vacancy caused by death, resignation, or otherwise, it is made the duty of the Governor to appoint some one to fill the vacancy. His qualifications are prescribed by law. The Legislature refers to his position as an office. Section 17 of Act 100 of 1922.⁷⁴

To show that the school board member is an officer under the state the court reasoned as follows:

As each parish school board constitutes part of the educational system of the state, which is a state institution, it would appear that the members of each such board, who, as we have seen, are officers, their offices being created by the Legislature, under a constitutional mandate, are officers under the state, laboring in the service of the state, although their duties as members of the respective parish boards are confined to limited territories. This conclusion finds support, by parity of reasoning, in *State ex rel. Smith v. Theus*, 114 La. 1097, 38 So. 870, . . .⁷⁵

⁷³Ibid., 173 La. 492-493.

⁷⁴Ibid., p. 493.

⁷⁵Ibid., p. 495.

With respect to dual office holding the principle included in section 4 of article 19 of the Constitution of 1921 was upheld and the interpretation was made that since a postmaster is an officer under the United States and a parish school board member is an officer under the state, one person cannot be both officers at the same time.

In determining whether a person may qualify lawfully as a member of the school board while holding the office of postmaster--the second question brought by the cases--the court relied upon decisions under similar conditions⁷⁶ and upon other legal explanation to the effect that one holding a Federal office of profit is not ineligible to election to a state office but that he cannot qualify for the state office as long as he retains the Federal position. The conclusion was that the act of qualifying as a member of the school board was ineffective and null because the person did not surrender his office as postmaster before attempting to qualify as a school board member.

In the reverse situation--the third question of office holding involved--it was maintained that if one accepts and holds a postmastership after having qualified as a member of the parish school board and while still holding that membership, such action renders the office of school board member vacant, since the holding of a position under the

⁷⁶State of Texas v. J. C. De Grass, (1880) 53 Tex. 387; Bunting v. Willis, Judge, (1876) 27 Grat. (68 Va.) 144, 21 Am. Rep. 388; Foltz v. Kerlin, (1886) 105 Ind. 221, 5 N. E. 672, 55 Am. Rep. 197.

Federal Government automatically vacates an office held by the same person under a state government.

The law concerning the time limit for qualifying as a school board member from the date of one's commission was handed down in answer to the fourth question involved. It was to the effect that one may not qualify legally after the expiration of thirty days from the date of one's commission and that a failure to qualify within the time limit renders the office vacant.

Established and forbidden powers. The law of Louisiana confers almost unlimited power upon the parish school boards of the state in matters pertaining to public education. After delegating to the parish boards such powers as the creation of districts, determining the location and number of schools therein, specifying the number of teachers and their salaries, making final selection of teachers, election and removal of the parish superintendent, and enforcing compliance to the state school laws, the legislature, in section 20 of Act No. 100 of 1922, as amended by Act No. 110 of 1928, declared that: "Each school board is authorized to make such rules and regulations for its own government, not inconsistent with law or with the regulations of the Louisiana State Board of Education, as it may deem proper." Also, the school board is empowered to watch over the school funds, serve as custodian of the school property, and establish with the state board of education schools of whatever nature necessary for providing adequate school

facilities for the children of the parish.⁷⁷

From time to time various phases of the school board's power have been questioned to the extent of requiring judicial interpretation. As may be seen from the following principal phases dealt with, the courts have established many powers but have declared some as definitely unauthorized and forbidden.

1. Records of proceedings. That records of school board proceedings be in writing has been declared essential. In a ruling⁷⁸ on this phase, it was pointed out that the president of the school board with whom a verbal agreement was claimed to have been made had no authority to make verbal grants of any kind affecting the school land sections--that the sections are not in his charge but in the trust of the board of school directors of which he is only the presiding officer. With respect to the board's method of keeping records, the court summarized: "Their proceedings are required to be in writing--and a record should be kept."⁷⁹

Constitutional and statutory legislation empowering school boards to meet for various purposes has included regulations as to the acceptable places of meetings and as to records thereof. Those who contest the legality of a place of meeting must definitely establish that the meeting

⁷⁷Acts of Louisiana, 1922, No. 100, secs. 19-21.

⁷⁸Francis D. Broussard v. Anatole Verret et al., (1891)
43 La. Ann. 929, 9 So. 905.

⁷⁹Ibid., 43 La. Ann. 930.

was held as claimed--the court will not presume that a meeting was held at an unauthorized place. Also, when minutes of the proceedings of a board are offered as evidence of a place of meeting, the record thereof must be official.⁸⁰

2. Selection of parish superintendent. The state's policy has been to clothe the parish school board with broad discretionary power in the employment of the parish superintendent of schools.⁸¹ The term of office is fixed⁸² but the determining of the amount of salary is left to the judgment of the parish school board.⁸³ An important controversial question has been: How long may a parish school board elect a superintendent before his term of office actually begins?

This principle was involved in the Russell case⁸⁴ in which the court: declared premature the selection of a superintendent made approximately one year before the expiration of the term then current, endorsed as proper action the rescinding of the election some six months before the beginning of the new term and advised that the time for selection should be just prior to the beginning of the new

⁸⁰Milton et al. v. Lincoln Parish School Board, (1922) 152 La. 761, 94 So. 386.

⁸¹Opinions of the Attorney General of Louisiana: June 1, 1912, to May 1, 1914, p. 338; May 1, 1928, to April 30, 1930, p. 497.

⁸²Ibid., May 1, 1930, to April 30, 1932, p. 501.

⁸³Ibid., May 1, 1914, to May 1, 1916, p. 368.

⁸⁴State ex rel. Russell (La Salle Parish School Board Intervener) v. Richardson, (1934) 178 La. 1029, 152 So. 748.

term. The court gave interpretation of the controlling statute⁸⁵ and pointed to the dangers of holding otherwise as follows:

However, we are satisfied it was the legislative intent that a parish school superintendent should be elected or appointed at some reasonable time before the beginning of his term of office.

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While it may be true that a school board is a continuous body because of the overlapping terms of its various ward members, that fact does not authorize the board to elect or appoint a parish superintendent so far in advance of his term, as was done in this case. If this were permitted the board could elect or appoint a parish superintendent at any time the majority of its members saw fit to do so, and thereby perpetuate a favored person in the office. We think the better practice would be, and one more in consonance with the purpose of the law, to impose the duty of timely electing or appointing a parish superintendent upon the school board as constituted just prior to the beginning of the new term.⁸⁶

Also, it was pointed out in this case that the bond a superintendent gives is no concern of his predecessor but that the form, manner, and regulations pertaining to the bond lie wholly within the province of the school board.

3. Employment of assistant parish superintendent discretionary with school board. By section 43 of Act No. 100 of 1922 the parish school board is empowered to appoint such assistant superintendents and other employees as may be necessary for the proper and efficient conduct of the schools, with which objective it is charged. No mention is made of

⁸⁵Acts of Louisiana, 1922, No. 100, sec. 19.

⁸⁶State ex rel. Russell (La Salle Parish School Board, Intervener) v. Richardson, (1934) 178 La. 1039.

the power to prescribe a term of office. The strength and the effect of this omission were tested by a plaintiff employed as assistant superintendent for a period beginning January 15, 1932, and ending June 30, 1933, but who was discharged July 14, 1932, because there was no further need of his services.⁸⁷

By fixing, through resolution, the tenure of office of the assistant superintendent, the school board tended to divest itself of its discretionary power, conferred upon it by statutory law, to terminate plaintiff's employment before the expiration of the term. In this regard the court said:

The universally accepted rule is that, where the tenure of the office is not prescribed by law, the power to remove is an incident to the power to appoint. The tenure not having been declared by law, the office is held during the pleasure of the authority making the appointment. 22 R. C. L. Sec. 266, p. 562; 46 C. J. Sec. 146, p. 985.

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The implied power to remove cannot be contracted away so as to bind the appointing authority to retain a minor officer or employee for a definite, fixed period.⁸⁸

Various decisions⁸⁹ were cited as controlling in these respects. The court pointed out that the legislature, in conferring the power of such appointments on the school board, certainly did

⁸⁷Potts v. Morehouse Parish School Board, (1933) 177 La. 1103, 150 So. 290.

⁸⁸Ibid., 177 La. 1106-1107.

⁸⁹Peters v. Bell, (1898) 51 La. Ann. 1621, 26 So. 442; Ebert v. Police Jury of Parish of Jefferson, (1915) 136 La. 391, 67 So. 176; Kirkpatrick v. City of Monroe, (1925) 157 La. 645, 102 So. 822.

not intend that a board through contract with an employee should delimit its own power of removal and perhaps deprive its successor of the specified power of appointment, of the incidental power of removal, and to this extent of the general supervision and control of the schools as granted by statute.

4. Administration of the public school fund. Concerning the power of the parish board with respect to the school funds, Justice John St. Paul warned against accepting as a precedent a certain decision in which the action of a parish school board in the disbursement of funds was not upheld.⁹⁰ He concurred in the opinion of the case as decided in the main issue, but called attention to the adjudications and constitutional provisions in which it had been affirmed that the board of school directors in each parish is charged with the control, administration, and disbursement of school funds and is the body empowered to order the treasurer to pay out these public funds.⁹¹

The court had opportunity in 1910⁹² to specify definitely one forbidden power in the administration of funds

⁹⁰Orleans Parish School Board v. Murphy, Commissioner of Public Finance, (1924) 156 La. 925, 101 So. 268.

⁹¹Charles N. Ealer, President, et al. v. Abraham Millsbaugh et al., (1880) 32 La. Ann. 901; The State of Louisiana v. W. F. Eames, (1887) 39 La. Ann. 986, 3 So. 93; Mrs. M. M. Fisher and Husband v. Board of Directors of City Schools of New Orleans et al., (1892) 44 La. Ann. 184, 10 So. 494; Constitution of Louisiana, 1921, art. 12, sec. 16.

⁹²Luchini et al. v. Police Jury et al., (1910) 126 La. 972, 53 So. 68.

by the school board--that is, the offering of rewards for the detection and punishment of crime, although the fines derived from the convicted violators were to be paid into the school fund. Rather, the court said: "School boards are created for the purpose of furthering the education of the youth of the state," and that they are not authorized to offer such rewards. In a case which dealt with an attempt at garnishment of a teacher's salary⁹³ the court again pointed out that the board is forbidden to divert school funds from their created purpose. It was reasoned that the responsibility of maintaining public schools in the parishes must be assumed by the parish school boards. The state has entrusted to them all the school funds provided for the support of public schools. They are especially charged with the responsibility of employing capable superintendents and teachers for whose salaries they dedicate a portion of the school funds entrusted to them. Funds so dedicated cannot be diverted to any other purpose except as authorized by the boards themselves.

5. Creation and abolition of districts. Power to create school districts in connection with the exercise of the power of special taxation was conferred on the parish school boards by the legislature in Act No. 152 of 1920. In 1927⁹⁴ court interpretation revealed that the school board has by implication the power, where circumstances permit, to abolish

⁹³Bank of Winnfield v. Brumfield et al., (1929) 11 La. App. 647, 124 So. 628.

⁹⁴Sylvestre et al. v. St. Landry Parish School Board, (1927) 164 La. 204, 113 So. 818.

a district created by it. Also, it may extend its power to include such action as the creation of districts of smaller area and amending boundaries so as to enlarge or contract a district, as long as controlling statutory requirements are not violated.

8. Location of schools. For many years the parish school board in cooperation with the parish superintendent has been given broad discretionary power in the location of schools within its created districts.⁹⁵ This power was endorsed by the court in 1933 in a case dealing with the consolidation of schools in De Soto Parish,⁹⁶ which consolidation was in accord with the suggestion of a special state committee of investigation requested to recommend changes and consolidations in order to save expenses. The plaintiffs entered suit to enjoin the parish school board from consolidating the two high schools involved. Because of technical errors the appeal was without merit, but the court explained that since the involved issue was of interest to the public, the case would receive attention.

The court presented the pertinent parts of the law relating thereto--chiefly Act No. 100 of 1922 and its amendments--and held: (1) that the establishment and the location of high schools are left entirely to the discretion of the parish boards, subject to state board limitations; therefore, the functions

⁹⁵Opinions of the Attorney General of Louisiana: May 1, 1908, to May 1, 1910, p. 282; May 1, 1910, to May 1, 1912, p. 326.

⁹⁶Hill v. De Soto Parish School Board, (1933) 177 La. 329, 148 So. 248.

of the parish boards in such capacities will not be interfered with by the courts unless the manner thereof was arbitrary, unreasonable, or fraudulent; and (2) that there was no abuse of discretion, the board having taken action when compelled by an emergency, and having afforded to the children of the consolidated school district represented by the plaintiff educational advantages as good as, if not better than, before the consolidation.

7. Proceedings by de facto and minority boards. It is generally admitted by legal authorities that the acts of a de facto school board member are as legal with respect to third parties and the public as the acts of a de jure board member.⁹⁷ De facto school board members are officials of the board and empowered to participate in all the duties thereof. The court upheld this principle in answer to a charge that majority action was lacking in the passage of a certain resolution because one of the five members voting affirmatively was not a legal member.⁹⁸ In the records touching upon this member's right to sit on the board, there was nothing to show that he had secured same illegally or that his commission was issued irregularly. In this absence of such proof, the court held that the particular member must be recognized, at least as a de facto member, and that effect must be given to his vote.

⁹⁷Newton Edwards, op cit., p. 98.

⁹⁸State ex rel. Floyd v. Hodges, (1928) 165 La. 552, 115 So. 747.

The attempt of the minority of a board to repeal a resolution adopted by the majority was pointed to by the court as a type of action which carries no power. The explanation to the contending parties was that since a majority of the board passed the resolution, it could be repealed only by majority action and that the attempted repeal by the minority was of no effect.⁹⁹

Relationship with parish treasurer. For more than a century the parish school treasurer, although he may have been another official, has been legalized as an accountant for the receipt and expenditure of the school funds as directed by the parish school board.¹⁰⁰

1. Responsibility of sureties on official bond. To assure the faithful performance of his duties as this accountant, the parish treasurer is required to give official bond. The sureties on his bond are solidarily responsible for his accounting for and paying over all school funds coming into his hands as parish treasurer. A ruling in 1874 held that they were thus bound and that the parish board could not release them, either directly or indirectly, before the treasurer had fully complied with the requirements of properly accounting for all funds.¹⁰¹

⁹⁹Ibid.

¹⁰⁰Acts of Louisiana, 1827, "An Act to provide for the support and administration of parish schools and for other purposes," sec. 3, p. 80.

¹⁰¹John Clements, President of the Police Jury of the Parish of Rapides, v. Eugene R. Blossat et als., (1874) 26 La. Ann. 243.

In 1881 some sureties on a parish treasurer's bond pleaded that the failure of the board of school directors to require regular accounts and settlements from their treasurer, who had defaulted in the handling of the funds, discharged them as sureties. The court saw no merit in this and declared also that mere failure to sue while the treasurer was in office did not discharge the sureties.¹⁰² In the same case it was established that the school board had a right under the law to sue on the official bond of a deceased treasurer for money improperly accounted for by him, even when the claim extended to the curator of the treasurer and to the widow of one of the sureties who had accepted the community of her and her deceased husband.¹⁰³ Another feature which fails to release a surety of his responsibility to the school board is that he is a citizen of another state.¹⁰⁴ The legislative act providing for the bond requires that the sureties be residents of the state. At the time of the acceptance of the bond the beneficiary may object to a nonresident as surety, but after acceptance, the surety himself will not be heard to claim this irregularity as releasing him from the bond.

2. Financial settlements. It is generally admitted that since the school treasurer is a product of the parish school board and subject to its direction, a settlement between the two should be final. The question at bar in a case in

¹⁰²Board of School Directors of the Parish of Madison v. A. V. Brown et al., (1881) 33 La. Ann. 383.

¹⁰³Ibid.

¹⁰⁴Ibid.

1881¹⁰⁵ was: May such settlement be reopened and declared null and void because of alleged irregularities? In this connection the court said:

This being an action for the rescission of a settlement between a school board and an officer thereof, and of a discharge given the officer after such settlement, it is clear that, as these acts and proceedings of the board related to a matter within the scope of its authority, the settlement and discharge in question must be presumed correct, and held as conclusive, both as to the board making the settlement and its successors, unless the acts complained of were in violation of the provisions of the law bearing thereon, or done in fraud or error; and to annul them on such grounds, the causes of nullity must be clearly and satisfactorily established.¹⁰⁶

However, it was conclusively shown that the board abused its power of discretion and failed to take cognizance of the positive prohibitory laws directing it in making such settlements. For example, it was shown that claims for contingent expenses and compensation were paid from the general school fund, since there was no local fund; this was considered a palpable infraction of the law. Another error was that the board allowed credit for amounts evidenced by receipts given by the treasurer to himself, when the law plainly states that such disbursements must be evidenced by warrants drawn by the president of the board on the treasurer. The defendant pleaded estoppel on the grounds that the accusing board was basing its complaints without his books, papers, and vouchers used while he was treasurer. He was refused estoppel on this

¹⁰⁵The School Board of Union Parish v. J. E. Trimble, (1881) 33 La. Ann. 1073.

¹⁰⁶Ibid., p. 1076.

claim because the records of the settlement left it a matter of dispute as to whether any books and vouchers were produced at that time. The court criticized the authorities for this laxity in the preservation of records and refused to hear the defendant on any such claim. The final result was that judgment was granted for the recovery of the money improperly credited to the treasurer.

In 1890 the supreme court was called upon to decide if the school board was acting within reasonable bounds of its discretionary power to accept a settlement with its treasurer when the bookkeeping was irregular but in which all moneys were accounted for.¹⁰⁷ It had been held previously that faulty bookkeeping alone does not invalidate settlements with the parish treasurer.¹⁰⁸ In the case at bar the treasurer had made settlements at various times. His action was upheld by the court thus:

The evidence convinces us that the defendant honestly and faithfully accounted for all the school funds received by him, and the quietus granted him by the School Board was given, after careful and patient examination of his accounts as treasurer of said board.¹⁰⁹

Removal of members and vacation from office. Provisions have been made, and interpreted when necessary, not

¹⁰⁷Parish School Board of East Feliciana v. George H. Packwood et als., (1890) 42 La. Ann. 468, 7 So. 537.

¹⁰⁸P. A. Simmons, President Police Jury, and Charles Leroy, Treasurer, Parish of Natchitoches, v. D. H. Boullt, Tax Collector, (1874) 26 La. Ann. 277.

¹⁰⁹Parish School Board of East Feliciana v. George H. Packwood et als., (1890) 42 La. Ann. 471.

only for the securing of membership on the parish board but also for the removal of members by those in authority, those whom they serve, and by acts of vacation whether through acceptance of another office or by their own volition. Judicial interpretation has been required at times to assure removal when advisable and to protect members from unfair removals.

Parish school boards are subject to removal under the provisions of an act of 1902 which states:

Be it further enacted, etc., that for incompetency, neglect of duty, or malfeasance in office, the Governor may remove a member or members of the parish boards of school directors, subject to the ratification of the State Board of Education.¹¹⁰

However, this does not give the governor the right to remove the members of a parish school board from office and appoint a new board without a legal hearing where the members of the old board are unwilling to surrender their rights; the court has ruled in such situations that ejection may be made only through an intrusion into office suit.¹¹¹ Similarly, if two persons hold commissions from the governor for the same office as school board member, the one who is a de facto member and whose commission has not expired is entitled to the office; the one who holds a commission by competent authorities but of subsequent date has recourse only to an ouster suit and until decision thereon has been made by the

¹¹⁰Acts of Louisiana, 1902, No. 214, sec. 6.

¹¹¹Jackson et al. v. Powell et al., (1907) 119 La. 882, 44 So. 689.

courts the de facto member may secure protection by an injunction restraining the later claimant from interfering.¹¹² A closely related ruling involved principally the question of whether the right to appoint implied the right to ascertain the existence of a vacancy. The court decided affirmatively and explained that if an incumbent concludes that no vacancy existed at the time of appointment, he has recourse to the forcing of a judicial interpretation, each claimant to abide thereby.¹¹³ Other interpretations of the removal statute have been that the causes named therein are restrictive and not to be replaced by "the deplorable condition of the school affairs of the parish" and that the state board of education does not have the power of removal, although the governor may have voted as a member thereof--removal must be a responsibility of the governor.¹¹⁴ Also, a petition presented by residents and taxpayers to have a school board member removed on the charge of his being in illegal possession was not granted; the court declared that citizens of a ward without a claim to the office in question and having no special interest therein had no right to oust or to petition for a

¹¹²Maxwell v. Randall, (1928) 8 La. App. 686.

¹¹³State ex rel. Wimberly v. Barham et al. State ex rel. Gray v. Pipes et al. State ex rel. White v. Mason et al. (1931) 173 La. 488, 137 So. 862.

¹¹⁴State ex rel. Muller, Dist. Atty., et al. v. Cyr et al., (1909) 124 La. 603, 50 So. 595.

restraining order to an appointee who had an apparent title to the office of parish school board member.¹¹⁵

The right of resignation of a member appointed by the governor has been held¹¹⁶ to be based on section 17 of Act No. 100 of 1922 which reads in part: "All vacancies in the membership of parish school boards caused by death, resignation, or otherwise, shall be filled by appointment by the Governor." After resignation is accepted by the governor, the member's claim to the office is finally terminated. However, this member who has resigned, if having been holding office legally, is duty bound to continue the exercise of the functions thereof until his successor be inducted into office, for the pertinent organic provision is:

All officers, State, municipal and parochial, except in case of impeachment or suspension, shall continue to discharge the duties of their offices until their successors shall have been inducted into office.¹¹⁷

Although he is required to function thus in official capacity, this school board member is not considered as an "usurper or intruder into office" so as to be required to litigate a case involving the right to such office, as for example, when a former occupant attempted to gain reinstatement by injunction. The court ruled¹¹⁸ that the contest should have been brought

¹¹⁵Thomas et al. v. Doughty, (1927) 163 La. 213, 111 So. 681.

¹¹⁶State ex rel. Bolin v. Webster Parish School Board et al., (1933) (La. Crt. of App.) 150 So. 446.

¹¹⁷Constitution of Louisiana, 1921, art. 19, sec. 6.

¹¹⁸State ex rel. Bolin v. Webster Parish School Board et al., (1934) (La. Crt. of App.) 157 So. 142.

while the one who resigned was a de facto claimant to the office.

Local Boards

General bases. The school board of a local nature was significant in the early development of public education in the state. In 1827 the parish school administrators were authorized to appoint three trustees for the schools in each of the police jury wards of the parish. These boards were entrusted with the employment of teachers and the performance of other detailed duties pertaining to supervision of the schools in their respective wards.¹¹⁹

Provisions were made in 1847 whereby each school district in mass meeting assembled was privileged to elect a district school board with general supervision of the school or schools therein.¹²⁰ In 1869 the state board of education was empowered to appoint at its discretion local school directors to assist in the detailed management of their particular schools.¹²¹ By 1904 the power of the local boards was on the decline,¹²² and since 1912 such boards have had a nominal existence with advisory responsibilities.¹²³

¹¹⁹Acts of Louisiana, 1827, "An Act to provide for the support and administration of parish schools and for other purposes," sec. 5, p. 82.

¹²⁰Ibid., 1847, No. 225, sec. 20.

¹²¹Ibid., 1869, No. 121, sec. 10.

¹²²Ibid., 1904, No. 167, sec. 8.

¹²³Ibid., 1912, No. 214, sec. 18.

In 1915 a complaint against the creation of overlapping districts was presented to the effect that confusion might arise from having three visiting trustees from each district.¹²⁴ The court called attention to the provision for three auxiliary visiting trustees in each district, to be selected by the patrons thereof, in the manner provided by the board, and expressed belief that the selection would soon be made for the newly created district. The attorney general had previously held that the act¹²⁵ requiring the selection of such trustees was practically directory.¹²⁶ The duties of the visiting trustees were held by the court to be:

"They shall visit the schools of their respective district and shall make quarterly reports to the board of directors of the actual condition of the schools, and shall make needful suggestions in all matters relating to the schools of which they are trustees."¹²⁷

An act of 1922 made provision whereby local school boards might be appointed by the parish boards.¹²⁸

Thus, it may be seen that the local boards of trustees or directors influenced the early development of public schools in the state, but that toward the close of the nineteenth century their influence was being replaced by the increasing power of the parish school boards.

¹²⁴Drouin et al. v. Board of Directors of Public Schools of Parish of Avoyelles, (1915) 136 La. 393, 67 So. 191.

¹²⁵Acts of Louisiana, 1912, No. 214, sec. 18.

¹²⁶Opinions of the Attorney General of Louisiana, June 1, 1912, to May 1, 1914, pp. 342, 345.

¹²⁷Drouin et al. v. Board of Directors of Public Schools of Parish of Avoyelles, (1915) 136 La. 400.

¹²⁸Acts of Louisiana, 1922, No. 100, sec. 24.

The Constitution of 1921 recognized the nominal existence of such local boards but circumscribed their power, thus:

Municipal or parish school boards and systems now in existence by virtue of special or local legislative acts are hereby recognized, subject to control by and supervision of the State Board of Education, and the power of the Legislature to further control them by special laws.¹²⁹

Issuance of warrants. Local school directors may issue warrants for the disbursement of funds belonging to their particular district. This power was questioned in the *Miahle* case¹³⁰ where the treasurer had refused to honor a warrant drawn by the school board in one of the districts of St. Martin Parish on the grounds that the school directors subscribing and delivering it were never elected, and, if elected, never qualified as directors. The law governing the issuance of warrants declares, "That the money which may be received by the several parish Treasurers, shall be held by them and paid out to the various school districts upon the warrant of a majority of the School Directors in each district."¹³¹

In ordering the treasurer to honor the warrant in question, the court held that district school directors had a right to issue warrants for their respective districts and that such warrants were legal whether the trustees were or were not de facto.¹³²

¹²⁹Constitution of Louisiana, 1921, art. 12, sec. 11.

¹³⁰*M. Miahle v. G. G. Fournet*, (1858) 13 La. Ann. 607.

¹³¹Acts of Louisiana, 1855, No. 321, sec. 9.

¹³²*M. Miahle v. G. G. Fournet*, (1858) 13 La. Ann. 607.

Special city boards. It has been the policy of the state to grant exceptional privileges to some of the larger centers in matters pertaining to their local school systems. For example, since 1826 New Orleans has had special boards to administer the operation of her public schools.¹³³

That such special boards have existed with a standing in court since 1871 is evidenced by a consolidated case to determine the allocation of powers between two constituted school boards of New Orleans.¹³⁴ The court recognized these boards and described the case as being:

. . . a controversy between two sets of functionaries deriving their powers from the same source and holding their offices under the act of the Legislature approved March 16, 1870, entitled "An Act to regulate public education in the State of Louisiana and city of New Orleans, and to raise a revenue for that purpose." These contestants are styled "The City Board of School Directors," and "The Ward Boards of School Directors." The contest relates to priority of jurisdiction over the public schools of the city and the right to receive and disburse the school funds apportioned to the city schools.¹³⁵

After a careful investigation of the power granted to the two corporate bodies under the existing law, the court held that the ward boards of school directors were given primary control and supervision of the public schools of the city. Since the

¹³³Acts of Louisiana, 1826, "An Act establishing two primary schools and one central school in the City of New Orleans, and for other purposes," sec. 2, p. 146.

¹³⁴Third Ward School District of New Orleans v. City Board of School Directors. Van Norden, Treasurer, etc., v. Thomas W. Conway, State Superintendent. Thomas W. Conway, State Superintendent, v. The City Board of School Directors. Van Norden, Treasurer, etc., v. Thomas W. Conway, State Superintendent. (1871) 23 La. Ann. 152.

¹³⁵Ibid., p. 153.

city board of school directors was subordinate in its powers and functions to the ward boards, it was not legally authorized to make contracts with teachers, and to receive or disburse the school funds belonging to, or coming to, the city for public school purposes.

SUMMARY

Political agencies--the legislature and the police juries--and boards of education--state, parish, and local--are the principal nonprofessional agencies which participate in the control of the state's educational system.

Political Agencies

The influence that the political agencies have had on the development of public school policies appears to be the following:

1. On the theory that a legislative body may enact laws which are not prohibited by the state or national constitutions the legislature in early statehood put into effect laws which controlled public schools.
2. The legislature is the principal agency through which the educational mandates of the state's organic laws are executed.
3. The legislature may be restrained by organic laws. For example, in 1879 the lawmakers were prohibited from authorizing support of any schools of a sectarian nature.
4. In some instances the legislature has delegated

its powers--the right of the qualified taxpayers to vote special levies for school purposes is an illustration.

5. Police juries were the chief controlling agencies of education in their respective parishes during the early history of the state. Later their powers included the discretionary ascertainment of the amount of tax levies for schools and the supervision of special tax elections.

Boards of Education

Since the beginning of the state's public school system the powers delegated to various boards of education have influenced the development of the educational policies. The facts pertaining to such policies seem to be mainly as follows:

1. From the historical point of view the state board must have been preceded by some other directing factor, for this centralized control received no legal recognition until after the War for Southern Independence.

2. The personnel of the state board during its early history included many ex-officio members; apparently, this was unsatisfactory, for the Johnson Act of 1916 eliminated all such members and specified the personnel to consist of the state superintendent of public education and five appointed members.

3. The Constitution of 1921 provided for the reorganization of the state board of education so as to consist of eight members elected by the voters and three appointed by the governor. This board is clothed with broad discretionary

powers and is given supervision and control of all free public schools, the certification of teachers, and the adoption of a program of studies for the public schools.

4. Notwithstanding the almost unlimited powers of the state board of education, the courts have rarely been called upon to interpret its actions.

5. The parish school board, as an agency of control, had its inception in the public school system in 1821.

6. Since the beginning of the present century the powers of the parish school board have been broadened to the extent that this board now plays for the parish a role similar to that which the state board plays for the state.

7. The personnel of the parish board consists of one person elected for each police juror of the various wards for overlapping terms of six years.

8. Vacancies for unexpired terms of parish school board members are filled by appointment by the governor.

9. The secretaryship of the parish board is filled by the parish superintendent by virtue of his office.

10. The parish school board is a corporate body with all the legal standing appertaining.

11. School board members are classified as officers of the state, for each board constitutes a part of the public school system, which is a state function.

12. Since a school board member is an officer under the state, he can hold no other state or Federal office at the same time.

13. The broad discretionary powers of the school

board are indicated by its general jurisdiction over the schools of the parish. The court's policy has been non-interference with the board's discretionary action except in case of abuse.

14. The records of school board proceedings must be in writing to be valid.

15. The parish school board is granted discretionary power in the selection of a parish superintendent of schools but not to the extent of re-election of a superintendent a year before his term expires.

16. Assistant superintendents of parish schools may be employed and removed at the discretion of the parish school board.

17. The parish school board's discretion in the disbursement of the school funds is circumscribed only by general laws pertaining thereto.

18. The creation and abolition of school districts and the location of schools therein are discretionary powers of the parish school board.

19. The official acts of de facto school board members are legally sound, but minority board proceedings carry no value.

20. In transactions with the parish school treasurer the board must hold the sureties on the treasurer's official bond responsible until final settlements have been made. The board's settlement with the treasurer is accepted as final and may be annulled only in case of established fraud or error.

21. School Board members may be removed from office for the restrictive causes specified by statute but only after a legal hearing.

22. The local school board was a significant agency of control in the early development of public education, but toward the close of the nineteenth century its influence was being replaced by the increasing power of the parish school board. The Constitution of 1921 continues to recognize the local boards but circumscribes their powers.

23. A few special city school boards of a local nature with broad powers have been in existence from an early date.

CHAPTER VIII

EDUCATIONAL CONTROL BY PROFESSIONAL AGENCIES

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In the organization and administration of the state's program of public education many responsibilities have been entrusted to professional agencies of control--the various types of superintendents and the public school teachers. It may be expected that the accompanying rights and duties have been the bases of controversies requiring legal interpretation. The present chapter is an attempt to show Louisiana's law relative to the professional agencies controlling her public school system.

SCHOOL SUPERINTENDENTS

State Superintendent

General supervision of public education by some one who represents the state is a natural consequence of state support. "The state must maintain supreme control of the public schools, otherwise there will always be the danger that the state purpose in establishing them may be defeated."¹ The chief educational officer is the principal professional agency

¹Hermann H. Schroeder, Legal Opinion on the Public School as a State Institution (Bloomington, 1928), p. 33.

of control in initiating and executing the public school policies of the state.² In Louisiana this officer who must direct the general supervisory program is the state superintendent of public education.

Legal bases. The office of superintendent had its legal inception in Louisiana in 1833 when to the office of secretary of state was added the office of state superintendent of education.³ The first subject reported by the committee on education in the first constitutional convention of the state which gave attention to the question of education was the urgent necessity of establishing some system of state control.⁴ As finally adopted the organic provisions were: "There shall be appointed a Superintendent of Public Education, who shall hold his office for two years. His duties shall be prescribed by law. He shall receive such compensation as the Legislature may direct."⁵ In response to this constitutional mandate, the legislature in 1847 amended its act of 1833 by making the state superintendent of public education a separate and distinct officer.⁶

In the next constitutional convention the majority report from the committee on public education included no

²Frank P. Graves, The Administration of American Education (New York, 1932), p. 541.

³Acts of Louisiana, 1833, "An Act supplementary to the several acts relative to Public Education," sec. 1, p. 141.

⁴Official Report of Debates in the Louisiana Convention, 1844-45, p. 316.

⁵Constitution of Louisiana, 1845, art. 133.

⁶Acts of Louisiana, 1847, No. 225, sec. 7.

provision for the office of superintendent of public education.⁷ On the other hand, the minority report pointed out that "the abolition of the Superintendent of the Public Schools would have a bad effect upon all our system of public education."⁸ When the question came up again, having been called from the minority rather than the majority report, an unsuccessful attempt was made to vest the police juries of the respective parishes with the power of control. By a slight majority the report retaining the superintendent's office was adopted, with the provision that this officer be elective by the people.⁹ Later the whole section pertaining to state control of public education was under consideration in the adoption of a substitute which abolished the office of state superintendent and transferred its duties to the secretary of state.¹⁰ Almost immediately the substitute was called up for reconsideration; the final result was that the original article was adopted with amendments to the effect that the office be elective and its retention optional with the legislature.¹¹ From the above it may be seen that in the Constitutional Convention of 1852 there were different opinions concerning the control of public education. The next convention made only the revisions that

⁷Journal of the Convention to Form a New Constitution for the State of Louisiana, 1852, p. 56.

⁸Ibid., p. 57.

⁹Ibid., p. 85.

¹⁰Ibid., p. 86.

¹¹Ibid., p. 87.

the term of the state superintendent be increased from two to four years and that the salary be fixed at four thousand dollars per annum until otherwise provided by law rather than left to the direction of the legislature.¹²

Various proposals concerning the state superintendent were made in the Convention of 1867-1868, chief of which dealt with: The placing of private schools under his supervision,¹³ method of selection,¹⁴ salary,¹⁵ delegation of the whole proposition to the legislature,¹⁶ and supervision.¹⁷ Some were included and others failed in passage, as is indicated by the following adopted provisions:

There shall be elected by the qualified voters of this State a Superintendent of Public Education, who shall hold his office for four years. His duties shall be prescribed by law and he shall have the supervision and the general control of all public schools throughout the State. He shall receive a salary of five thousand dollars per annum, payable quarterly, on his own warrant.¹⁸

Again, in the Constitutional Convention of 1879, it was evident that the people had not become reconciled to state agencies of public school control. The minority group of the committee on education emphasized the need of such control and

¹²Constitution of Louisiana, 1864, art. 140.

¹³Official Journal of the Proceedings of the Convention for Framing a Constitution for the State of Louisiana, 1867-1868, p. 17.

¹⁴Ibid., p. 60.

¹⁵Ibid.

¹⁶Ibid., p. 94.

¹⁷Ibid., p. 202.

¹⁸Constitution of Louisiana, 1868, art. 137.

supervision.¹⁹ On the other hand, some recommended that the state superintendent's office be abolished and the duties assumed by the secretary of state,²⁰ but finally an amendment retaining the office of state superintendent was adopted by a small margin.²¹ Those who would lower the status by a reduction in salary were successful to a certain extent, for the maximum annual expense of the office was named at three thousand dollars.²²

The theory of state control of public education seems to have been accepted without protest in the Constitutional Convention of 1898.²³ The provisions for a state superintendent of education were brought forward from the constitution of 1879 with the revision only that the maximum amount which might be used as office expense was fixed at two thousand dollars;²⁴ however, an amendment to this article in 1908 raised the salary of this officer to five thousand dollars, payable monthly on his warrant, and removed the provision concerning expenses.²⁵

¹⁹Official Journal of the Proceedings of the Constitutional Convention of the State of Louisiana, 1879, pp. 168-169.

²⁰Ibid., p. 173.

²¹Ibid., p. 175.

²²Ibid., pp. 202-203; Constitution of Louisiana, 1879, art. 225.

²³Official Journal of the Proceedings of the Constitutional Convention of the State of Louisiana, 1898.

²⁴Constitution of Louisiana, 1898, art. 249.

²⁵Ibid., as amended by Act No. 28 of 1908, adopted November, 1908.

The policy of state control having been accepted, there were no controversial issues on this subject in the Constitutional Convention of 1921 except relative to the method of selecting the chief educational officer. Some members thought the voters of the state should have the privilege of electing this officer,²⁶ while others believed that the state board of education should make the selection.²⁷ Final provisions were:

The board shall elect for terms of four (4) years a chairman and a State Superintendent of Public Education. The latter shall be ex officio secretary, and his salary shall be fixed by the board at not less than five thousand (\$5,000.00) dollars nor more than seven thousand five hundred dollars (\$7,500.00) per annum, payable monthly on his own warrant, and he may be removed by the board.²⁸

This section was amended the next year so as to make the officer elective by the voters of the state and not subject to removal by the state board of education.²⁹

Official rights in court. It is remarkable that for more than a century the chief educational officers of the state have conducted the affairs of that office in the interest of public education without interference from the judicial branch of government. However, the superintendent of public education, as a ministerial officer of the state, is assured

²⁶Official Journal of the Proceedings of the Constitutional Convention of the State of Louisiana, 1921, pp. 44, 128.

²⁷Ibid., p. 688.

²⁸Constitution of Louisiana, 1921, art. 12, sec. 5.

²⁹Ibid., as amended by Act No. 105 of 1922, adopted November, 1922.

the benefit of the state's counsel in court cases or other legal procedures in connection with the functions of the office. He is prohibited from appearing in court in his official capacity except through one of the state's attorneys. This principle was clearly demonstrated in the Edwin H. Fay case,³⁰ where the plaintiff, in his official capacity, entered suit through the assistance of private counsel to enjoin the disbursement of certain sums of appropriated money. The supreme court interpreted that part of Act No. 21 of 1872 which controls the case as follows:

The first Section of the Act positively prohibits the Auditor, the State Treasurer, or any other ministerial officer of the State, from appearing in court, either in person or by private counsel in any suit in which such officer may be a party or may be interested in his official capacity, but in all such cases he must be represented by the Attorney General, if the suit is instituted in New Orleans, or by the local District Attorney in any of the parishes of the State. It authorizes the Governor or Attorney General, in case of necessity, to have such officer represented by an attorney-at-law.

The second Section prohibits any court of the State from maintaining any suit in which such officer may appear in person or by private counsel, and requires the dismissal of such suit "ex officio or on motion," as in case of nonsuit, and provides that notice of such dismissal be served on the Attorney General or proper District Attorney, who may on motion reinstate such action, if he deem it expedient so to do.³¹

³⁰Edwin H. Fay, Superintendent of Public Education, v. Allen Jumel, Auditor, and E. A. Burke, Treasurer, (1883) 35 La. Ann. 368.

³¹Ibid., pp. 368-369.

Division Superintendent

Reconstruction legislation in 1869 provided that the state board of education, which had been appointed by the governor, should appoint six division superintendents of public education. Their duties were to supervise and control the educational systems of their respective districts.³² Statutory provision for this type of superintendent was continued in the general school act of 1870 with the change that the appointive power was transferred to the governor.³³ However, these officials and their system of supervision went out of existence with the termination of the Reconstruction Period.

Removal from office. A check of the court records reveals one significant case dealing with division superintendents.³⁴ Since the case is self-explanatory and very briefly reported, its record is quoted in full:

On the twenty-ninth of March, 1870, the relator was appointed Division Superintendent of Education, first division, in pursuance of the third section of act No. 6 of 1870, entitled "An act to regulate public education in the State of Louisiana and city of New Orleans and raise a revenue for that purpose." His term of office was three years, and salary \$2500, payable quarterly upon his own warrant. This proceeding was instituted on the twenty-first of September, 1872, to compel the State Auditor to issue to him a warrant on the State Treasurer for \$1770.55, for amount of salary from the first of December, 1871, to the thirty-first of August, 1872, and from a judgment making the mandamus peremptory this appeal is taken.

³²Acts of Louisiana, 1869, No. 121, secs. 46, 55.

³³Ibid., Extra Session, 1870, No. 6, sec. 3.

³⁴State of Louisiana ex rel. R. O. Richardson v. James Graham, State Auditor, (1873) 25 La. Ann. 73.

The above act which created the office authorized the removal of the division superintendents upon certain contingencies, and the mere fact of relator's removal, which is admitted, is presumptive evidence that it was made for a proper cause. See the case of Dubue v. Voss, 19 An. 210 (92 Am. Dec. 526) and Vincent v. Populus, Opinion Book 37, p. 584. It was incumbent on and in the power of relator to show that the removal was without cause or not in conformity to law. This has not been done. In the cases cited by the relator, provision was not made for the removal as was effected, or no proof of a removal was adduced, and they are therefore not applicable to this case.

It is therefore ordered that the judgment appealed from be reversed, and that there be judgment in favor of defendant, rejecting the application, with costs in both courts.³⁵

Therein legal recognition was given to the office of division superintendent, appointment to and removal therefrom, and the end of the state's responsibility to pay that officer after he had been removed for cause.

Parish Superintendent

Legal developments of office. It seems that the idea of professional supervision of the parish schools did not develop until after the Constitutional Convention of 1844-1845, of which one result was the enactment of a general educational law of the state. This law included provisions for the election of a parish superintendent by the voters of the parish and fixed the maximum remuneration for his services at three hundred dollars per year.³⁶

³⁵Ibid.

³⁶Acts of Louisiana, 1847, No. 225, sec. 11.

Apparently the people were not ready for this type of control, for in 1852 the office was abolished.³⁷ In 1877 the parish school board was authorized to elect a secretary at a salary of \$100 per year.³⁸ Not until 1882 was the office re-established, after having had organic authorization;³⁹ at that time the parish school board was empowered and directed to select this officer at an annual salary of not more than \$200 for the double function of serving as secretary of the board and parish superintendent.⁴⁰ The Constitution of 1898 required the same double function and provided that the salary and qualifications of said official should be under legislative control.⁴¹ Since the beginning of the present century the parish school board has been given considerable latitude in the annual salary schedule of the superintendent: the law of 1902 fixed the minimum at \$200 and the maximum at \$1200,⁴² while the act of 1904 increased the lower limit to \$600 and abolished the upper limit.⁴³ In 1916 the minimum was increased to \$900 and the maximum was fixed at \$4000.⁴⁴ The Constitution

³⁷Ibid., 1852, No. 310, secs. 1-3.

³⁸Ibid., Extra Session, 1877, No. 23, sec. 7.

³⁹Constitution of Louisiana, 1879, art. 225.

⁴⁰Acts of Louisiana, 1882, No. 70, sec. 2.

⁴¹Constitution of Louisiana, 1898, art. 250.

⁴²Acts of Louisiana, 1902, No. 214, sec. 35.

⁴³Ibid., 1904, No. 167, sec. 35.

⁴⁴Ibid., 1916, No. 120, sec. 27.

of 1921 placed the qualifications and duties of the incumbent of this office under the supervision of the state board of education and left certain phases of control, such as the selection of the official, to the parish school board. Also, it was provided that the board need not confine itself to any particular political subdivision of the state in finding a suitable official.⁴⁵ At present the parish superintendent, under the direction of the parish school board and in cooperation with the state department of education, has become the chief agent in supervision and control for promoting the educational policies of the state in his particular parish.

Official status. It is generally admitted that the parish superintendents of the state are integral elements of the public school system, but their status seems to have been a variant, concerning which the courts have been called upon to give several interpretations.

In a suit in 1905,⁴⁶ occasioned by the refusal of a district attorney to institute removal from office proceedings against a parish superintendent on the grounds that this superintendent is not a public officer, the court decreed:

We find in this position every element which the courts have decided it takes to make a public office. It is a public station or employment provided for by the Constitution of the state. The manner by which the person who is to fill this station is to be chosen is fully designated and declared both by the Constitution and by statute,

⁴⁵Constitution of Louisiana, 1921, art. 12, sec. 10.

⁴⁶State ex rel. Smith et al. v. Theus, District Attorney, (1905) 114 La. 1097, 38 So. 870.

and the title of the officer is given in the same way. The tenure of office, its duration, and the duties of the officer are all specifically prescribed, and there can be no question that a parish superintendent of public education is a public officer--a state officer whose duties are limited within the bounds of the parish for which he is elected.⁴⁷

Another point established in the instant case was that citizens and taxpayers have a legal right when properly united to demand that the district attorney bring suit against an incumbent who is charged with having illegally usurped and intruded into, or with unlawfully holding and exercising, the office of parish superintendent of public education.

As was shown in the legal developments pertaining to this school official, the Constitution of 1921 provided that the parish school board need not confine itself to any particular political subdivision when making the selection of a parish superintendent. An interpretation of this provision was rendered by the court in 1931⁴⁸ in a case concerned primarily with removal of the superintendent from office. The pertinent provisions of the Constitution of 1921 and their repetition in section 19 of Act No. 100 of 1922 were cited. It was interpreted that these were the equivalent of saying:

. . . a parish superintendent of schools need not be an elector of the parish; because, according to section 1 of article 8 of the Constitution of 1921, a person cannot be an elector of a parish unless he is, and has been for a year, an actual and bona fide resident of the parish, and unless he is and has been for two years an actual and bona fide resident of the state. Hence, when the

⁴⁷Ibid., 114 La. 1104.

⁴⁸State ex rel. Harvey v. Stanly, (1931) 173 La. 807, 138 So. 845.

Constitution of 1921 declares that a parish superintendent of schools need not be a resident of the parish, it, in effect, declares that a parish superintendent of schools shall not be deemed a public officer, because he cannot be a public officer without being a resident of the parish.⁴⁹

In the meantime, the court of appeal in 1928⁵⁰ treated the parish superintendent as a public officer in connection with proceedings for the garnishment of his salary. However, this case did not mention the new provision concerning the residence requirements of this official and it based its reasoning on a case decided before the late constitution. The Harvey case of 1931⁵¹ which held that the superintendent is not a public officer under the Constitution of 1921 would seem to control, since it is a supreme court case, is of more recent date, and makes specific explanation that the court of appeal case did not apply because it based its decision on a previous constitution.

Thus, although the parish superintendent of schools was correctly considered a public officer in the early history thereof, that status was changed with the Constitution of 1921 and at present this school official is not legally considered a public officer.

Viva voce vote required in election. In a case concerning the election of a parish superintendent the question of whether the school board should elect this official by

⁴⁹Ibid., 173 La. 814-815.

⁵⁰Odom v. Hodge-Hunt Lumber Co., Inc., (1928) 9 La. App. 418, 121 So. 237.

⁵¹State ex rel. Harvey v. Stanly, (1931) 173 La. 807, 138 So. 845.

secret ballot or by viva voce vote was the principal issue.⁵² In the controversial situation the school board of Winn Parish proceeded to elect by secret ballot a parish superintendent. The count showed a vote of 5 to 4 in favor of Jesse J. Mixon; later 5 of the 9 members declared to have voted for the incumbent, Asa Leonard Allen. The board met the next day and after deciding that an error had been made the day before in announcing the election results, proceeded to elect by viva voce vote, which resulted in the selection of Allen. Suit was instituted to compel Mixon, the defendant, who was previously superintendent, to surrender the office to Allen who was last elected.

The court confirmed Allen's right to the office and explained its action in terms of article 203 of the Constitution of 1913, which declares that the vote shall be viva voce in all elections by persons voting in a representative capacity. More recently the state's legal adviser has rendered the same interpretation⁵³ of similar provisions in the Constitution of 1921.⁵⁴

Fixed term of office. The questions of what constitutes the legal term of office of the parish superintendent and the relation thereof to changes in the personnel of the

⁵²State ex rel. Long, Dist. Atty. et al. v. Mixon, (1918) 142 La. 714, 77 So. 512.

⁵³Opinions of the Attorney General of Louisiana, May 1, 1932, to April 1, 1934, p. 310.

⁵⁴Constitution of Louisiana, 1921, art. 8, sec. 7.

parish board were presented in a case in 1909.⁵⁵ The test was occasioned by a change in the statutes to the effect that parish school boards should be elected by the voters of the various wards,⁵⁶ where formerly they had been appointed by the state board,⁵⁷ and by the provision in the later statute that the incumbents would hold office until their successors were elected which elections were to be at the time of the Congressional elections. Each board was authorized to elect a parish superintendent for a term of four years.⁵⁸ Conformity to the revised statutes produced the situation that the outgoing board elected a superintendent whose term would extend practically throughout the official period of the incoming board.

In the case⁵⁹ which sought interpretation of this condition the superintendent appointed by the new board instituted an ouster suit against the superintendent appointed by the old board. The incumbent's term had expired shortly before the new board was elected and the old board had reappointed him. Attention was called by the court to the corporate existence of the board, which signifies that the change of the

⁵⁵State ex rel. Wilson v. Hardin, (1909) 123 La. 736, 49 So. 490.

⁵⁶Acts of Louisiana, 1906, No. 60, sec. 1.

⁵⁷Ibid., 1888, No. 81, sec. 3.

⁵⁸Ibid., 1908, No. 49, sec. 8.

⁵⁹State ex rel. Wilson v. Hardin, (1909) 123 La. 736, 49 So. 490.

individuals who compose the board does not affect the status of the board. It was recognized that the parish board had the authority to appoint a superintendent for four years but for no shorter or longer term and that, therefore, the outgoing board performed its mandatory duty at the expiration of the superintendent's term by appointing a successor for a period of four years. Thus, this decision reserved to the superintendent appointed by a board legally constituted the right to serve four years regardless of termination of office of the board who elected him, the subsequent board's being bound by its predecessor's action. Removal could have been secured through authorized means but not because the governing board for the majority of the term was not the appointing board.⁶⁰ Naturally, complications might arise between a superintendent and a board serving under such conditions as in the instant case; in this connection the court said:

Whether it would be more agreeable or convenient, or would better subserve the interest of the public, that the matter should be so arranged that the members of the board should at all times be able to control the appointment of the superintendent of education of the parish, in order to control, or as incidental to the control of, the appointment of the secretary of the board and of the treasurer of the school funds of the parish, is a matter for the consideration of the General Assembly. We can only say that the existing laws do not so arrange it, . . .⁶¹

Salary determination. The Constitution of 1921, by omitting any reference to the salary of the parish superintendent,

⁶⁰Ibid.

⁶¹Ibid., 123 La. 741.

left that responsibility with the legislature. That body delegated the duty to the parish school board; in Act No. 120 of 1916 it was specified that the maximum salary should be \$4000, but in Act No. 100 of 1922 no reference was made to salary. In view of the latter statute the Webster Parish School Board, which had been paying its school superintendent an annual salary of \$4000, increased the said superintendent's annual salary \$1000, beginning July 1, 1925. Certain taxpayers⁶² attacked the legality of such action by the school board.

The principal issue for the court to determine was if Act No. 120 of 1916 was superseded by Act No. 100 of 1922. A similar principle was involved in a suit carried to the Supreme Court of the United States and in another case to a state supreme court; both decisions maintained the theory that where two laws dealing with similar subject matter were enacted at different times, the latter covering the whole subject matter of the first and embracing new provisions, the former was repealed or superseded by the latter.⁶³ In upholding the school board's discretionary power to fix the salary of the parish superintendent, the court said:

Our conclusion is that the provision limiting the salary of parish superintendents of education as contained in Act 120 of 1916 was repealed or superseded by the Act 100 of 1922, and

⁶²Knight v. Webster Parish School Board, (1927) 164 La. 482, 114 So. 104.

⁶³United States v. Tynen, (1870) 11 Wall. 88, 20 L. Ed. 153; Wood et al. v. Bateman, (1921) 149 La. 290, 88 So. 824.

that the authority to fix the salary of such superintendents is vested in the parish board of school directors.⁶⁴

De facto superintendent required to function. The law is self-explanatory in prescribing that parish superintendents are to execute contracts with teachers as directed by the school boards of their respective parishes. One pertinent point at issue, however, has been to determine if a school superintendent under the law may be compelled to execute a contract when he refused on the ground that he had been alleged to be a de facto superintendent by the plaintiff.⁶⁵ The courts have been consistent in maintaining that officers whether de facto or de jure have a right to discharge the duties of their office as prescribed by law as long as possession is maintained.⁶⁶ In the instant case the court pointed out the possible results of holding otherwise as follows:

If one in possession of office, under color of title, could not be required, during his incumbency, to discharge the duties of the office, the public might suffer until his title to it could be ascertained in a proper proceeding. The acts of an officer de facto are valid as to third persons and the public.⁶⁷

In ordering the defendant to sign the contract in question, the court said that according to section 23 of Act No. 100 of

⁶⁴Knight v. Webster Parish School Board, (1927) 164 La. 487.

⁶⁵State ex rel. Floyd v. Hodges, (1928) 165 La. 552, 115 So. 747.

⁶⁶State v. Sadler et al., (1899) 51 La. Ann. 1397, 26 So. 390; Williams et al. v. Police Jury of Concordia Parish et al., (1926) 160 La. 325, 107 So. 126; State v. Moreau et al., (1923) 153 La. 671, 96 So. 527.

⁶⁷State ex rel. Floyd v. Hodges, (1928) 165 La. 556.

1922 it became "the duty of the parish superintendent to sign all contracts with teachers,"⁶⁸ and further:

. . . section 49 provides that no person shall be appointed to teach without a written contract for the scholastic year in which the school is taught. The duties falling upon relator, as we appreciate them, include teaching. Relator has been selected by a majority of the membership of the board, and not to require defendant, as superintendent, to sign the contract would be to permit him to override the law. In this instance the duty he is to perform is merely a ministerial one.⁶⁹

Thereby the court held that the parish superintendent de jure or de facto must perform the duties of his office.

Removal causes restrictive. The power to remove a parish superintendent is vested in the parish board, which board may remove him, at its discretion, for incompetency, inefficiency, or unworthiness--such was the interpretation by the state's legal adviser.⁷⁰ The court's viewpoint on this was sought in the Harvey case,⁷¹ in which a newly appointed superintendent instituted suit to compel an incumbent to surrender office--the incumbent had been notified by the board that his services were terminated because the majority of the board was out of harmony with him.

The constitutionality of removal by parish boards was upheld by the court in the following explanation relative

⁶⁸Ibid., p. 558.

⁶⁹Ibid.

⁷⁰Opinions of the Attorney General of Louisiana, May 1, 1922, to May 1, 1924, pp. 450-451.

⁷¹State ex rel. Harvey v. Stanly, (1931) 173 La. 807, 138 So. 845.

to the controlling act:⁷²

The legislative act includes but one broad comprehensive object, and that is the administration and supervision of the public schools of the state. Its provisions embrace the means for the accomplishment of that object. The removal of parish superintendents, as well as their election, by parish school boards, constitute an important and necessary part of the administration and supervision of the state's school system. And the section of the legislative act authorizing such removal falls within its title.⁷³

Since the office of superintendent is not a public office under the Constitution of 1921, the question to be decided was whether or not the reasons for removal were in compliance with the controlling law which provides that parish superintendents may be removed only on proof of "incompetency, inefficiency, or unworthiness."⁷⁴ The court maintained the soundness of the contention of the respondent to the effect that the specifications in the controlling law "of the causes authorizing the removal of a parish superintendent of schools are restrictive, and that consequently a removal for any other cause is unauthorized."⁷⁵ Further, the court pointed out that the lack of harmony might have been brought about without any irregularity in the superintendent's performance of his duties.

In handing down this decision the court continued its policy of holding ouster suits to the strict interpretation

⁷²Acts of Louisiana, 1922, No. 100, sec. 19.

⁷³State ex rel. Harvey v. Stanly, (1931) 173 La. 816.

⁷⁴Acts of Louisiana, 1922, No. 100, sec. 19.

⁷⁵State ex rel. Harvey v. Stanly, (1931) 173 La. 819.

of the law and discouraged school boards from attempting to remove parish superintendents because of petty differences, or in a manner otherwise than that directed by the legislature.

PUBLIC SCHOOL TEACHERS

In the last analysis the teacher is the chief agent for the individual development of the youth. "The real work of the school as an instrument for carrying out the purpose for which the school was established is done by the teacher."⁷⁶ Then, the state and the public must be concerned about the teaching personnel of the public schools.

Employment of Teachers

Necessity for certification. The policy requiring certification of teachers in some form had its beginnings with the establishment of the public schools. The police juries, as managers of the parish schools,⁷⁷ parish school boards,⁷⁸ ward trustees,⁷⁹ parish superintendents of schools,⁸⁰ or some

⁷⁶Hermann H. Schroeder, op. cit., p. 65.

⁷⁷Acts of Louisiana, 1819, "An Act to amend the several laws enacted on the subject of Public Schools within this State, and for other purposes," sec. 2, p. 52.

⁷⁸Ibid., 1820-21, "An Act to extend and improve the system of Public Education in the State of Louisiana," sec. 2, p. 64.

⁷⁹Ibid., 1827, "An Act to provide for the support and administration of parish schools and for other purposes," sec. 5, pp. 80, 82.

⁸⁰Ibid., 1847, No. 225, sec. 15.

local authorities⁸¹ were empowered at various periods to certify to the eligibility of teachers until 1912, since which time the state board of education has had complete authority in the certification of teachers.⁸²

The question of whether the possession of a certificate is necessary to validate a contract was one of the principles involved in the Gauthier case,⁸³ in which attempt was made to recover a salary. One provision with which the claimant did not comply was the requirement that a teacher must hold a certificate issued by the Louisiana State Board of Education, which certificate must be of a grade sufficiently high to meet the requirements for the school.⁸⁴ Those teaching at the time of the passage of this regulation were differently provided for,⁸⁵ but this did not apply to the person in question. The plaintiff possessed a diploma from the State Normal College; he contended that this was the equivalent of the required certificate and that the parish superintendent should be permitted to recognize it as such, for the document read, "it entitles the holder to a State Teacher's Certificate." The court held that to sustain this contention would be to

⁸¹Ibid., 1852, No. 310, sec. 6.

⁸²Ibid., 1912, No. 214, sec. 47; Opinions of the Attorney General of Louisiana, May 1, 1916, to May 1, 1918, p. 439.

⁸³Gauthier v. St. John the Baptist Parish School Board et al., (1927) 5 La. App. 570.

⁸⁴Acts of Louisiana, 1922, No. 100, sec. 49.

⁸⁵Ibid., sec. 56.

violate the whole tenor of the governing act and place the judgment of the parish superintendent beyond that of the legislature and thereby nullify the provision: "After this act goes into effect, no person shall be appointed as teacher in the public schools of the state, unless he or she holds a proper certificate."⁸⁶

Thus the court established very definitely that a teacher must be certified according to the governing act; this means that all who did not hold certificates prior to the passage of Act No. 100 of 1922 must be the possessors of certificates issued by the Louisiana State Board of Education.

Method of selection. The selection of teachers is made by the school board, and the parish superintendent has no legal right to contract with a teacher not named by the board--his power extends to nomination only. This was established in the Gauthier case⁸⁷ where an attempt was made to collect a salary on an alleged contract entered into with the parish superintendent. The court referred to the governing act which provides that, "The parish school board shall . . . select such teachers from nominations made by the parish superintendent, provided that a majority of the full membership of the board may elect teachers without the endorsement of the superintendent."⁸⁸

⁸⁶Ibid.

⁸⁷Gauthier v. St. John the Baptist Parish School Board et al., (1927) 5 La. App. 570.

⁸⁸Acts of Louisiana, 1922, No. 100, sec. 20.

From this it may be seen that the law governing the choice of teachers is mandatory to the effect that parish school boards shall select teachers from nominations made by the parish superintendent. The court believed that this power of selection could not be delegated to the superintendent; consequently, it held that a selection made by other than the parish school board is of no effect.

The same policy was upheld by a later decision⁸⁹ in which the court refused to legalize claims based upon a teaching contract entered into between a teacher and a parish superintendent without consent of the school board. In 1933 the court upheld the latter part of section 20 of Act No. 100 of 1922--that is, a majority of the full membership of the parish school board may elect teachers without the endorsement of the parish superintendent.⁹⁰

Control by employing board. Differences of opinion have arisen between parish school boards as to the control of teachers where a school district is made up of territory from two parishes. In 1926 the court of appeal⁹¹ was called upon, in a case transferred to it by the supreme court, to determine which school board governed the employment of teachers in the Fairview-Alpha High School. The facts in the case seem to show that the school in question was maintained at the joint

⁸⁹Brown v. St. Bernard Parish School Board, (1930) 14 La. App. 460, 131 So. 760.

⁹⁰Cupit v. Vernon Parish School Board, (1933) (La. Crt. of App.) 145 So. 391.

⁹¹Parish School Board of Red River Parish v. McHaney, (1926) 5 La. App. 696.

expense of the parishes of Red River and Natchitoches, and that by agreement, the management and control of the school was to belong to them alternately. For the session in question, 1922-1923, Natchitoches Parish was in charge and had employed the defendant as principal. Red River Parish School Board brought suit against the said principal to restrain him from exercising any control in the Fairview-Alpha High School, charging that he had assumed his position without legal authority.

The court maintained that such agreement between school boards was under the authority of the school laws and that the board in charge for 1922-1923 had exclusive control during that year over the teachers whom it had employed and must not be interfered with by the other board.

The Contract

Indefinite duration prohibited. That the time element is an essential feature of the teacher's contract was evidenced in the Golden case.⁹² According to the following resolution which was adopted in 1877, New Orleans made an effort to extend her teachers' contracts to an indefinite period:

"Resolved, That the following named teachers in the public schools of the City of New Orleans are appointed subject to a probation of three months' service, and all those who may not be removed for cause within three months, are hereby declared permanently selected, subject to removal

⁹²F. A. Golden v. Board of Directors of the Public Schools of New Orleans, (1882) 34 La. Ann. 354.

only on written charges and after trial and conviction by this Board, in the manner and for the causes specified by law."⁹³

The plaintiff had been dismissed by the New Orleans Board of School Directors. On the basis of compliance with the foregoing resolution, he filed suit to collect his salary on the ground that he was employed for an indefinite period of time. In disapproving the claim for the alleged salary, the court explained--after stating the legislative provisions pertaining to employment of teachers by the parish board and by the city board--that there seemed to be no inconsistency between the two sections but that the limitation of the term of employment of all teachers is fixed at one year. It pointed out the possible danger of employment according to the resolution, which could mean practically a life tenure.

Fairly recently legislative sanction has been given to the effect that those teachers who were properly certified and employed in the New Orleans system at the time of the passage of the act⁹⁴ would be regarded as permanent and that later employees were to be contracted with annually for three years, after which time appointment might be made permanent by the board.⁹⁵ This provision received endorsement by the attorney general in 1922.⁹⁶

⁹³Ibid., pp. 355-356.

⁹⁴Acts of Louisiana, 1922, No. 100.

⁹⁵Ibid., sec. 66.

⁹⁶Opinions of the Attorney General of Louisiana, May 1, 1922, to May 1, 1924, p. 429.

Written and verbal--when legal. It is generally conceded that written contracts are legally sound, especially where at least a scholastic year is under consideration. With regard to the employment and the contracts of teachers the controlling legislation provides that the parish board may employ teachers by the month or by the year and fix their salaries⁹⁷ and that, "No person shall be appointed to teach without a written contract for the scholastic year in which the school is to be taught, . . ."⁹⁸ The results of reading these provisions together was the interpretation sought in the Cupit case.⁹⁹

The court held that the requirement of a written contract, as stated in the act, had reference to those persons who were appointed to teach for the scholastic year in which the school is to be taught and that the correct inference is that a written contract is not required where the teacher is employed to teach by the month as was the plaintiff. On the principle the court said:

It can readily be conceived why a written contract, in the teaching profession as well as in any other profession or occupation, where the employment is for a long period of time, would be desirable in order to protect the rights of both parties, whereas in an employment for a short period at the time it may not be necessary.¹⁰⁰

⁹⁷Acts of Louisiana, 1922, No. 100, sec. 20.

⁹⁸Ibid., sec. 49.

⁹⁹Cupit v. Vernon Parish School Board, (1933) (La. Crt. of App.) 145 So. 391.

¹⁰⁰Ibid., pp. 391-392.

Also, in the explanation it was pointed out that the provision in the controlling act¹⁰¹ to the effect that it is the duty of the parish superintendent to sign all contracts with teachers has reference only to contracts entered into for the scholastic year in which the school is to be taught.

Length of period for acceptance. In the consummation of a contract, the sending of an official notice to a teacher to inform her that she has been appointed to a teaching position brings up the question as to how much time may elapse before acceptance without the invalidation of the contract in question. An illustration of this principle was involved in the Picou case¹⁰² in which a teacher, after having been duly employed to teach a certain colored school was prohibited by the school board and superintendent from teaching said school. When the suit was filed for the permission to teach said school or to collect the salary as agreed upon, the school board claimed that the contract was rendered invalid because of a lapse of twelve days in the teacher's acceptance. In view of the fact that the plaintiff had complied with all governing regulations, the court maintained:

It is inconceivable from consideration of all the facts involved in this case, and particularly that the plaintiff had for ten years been teaching in the parish of St. Bernard as a public school teacher, and had been so doing even up to

¹⁰¹Acts of Louisiana, 1922, No. 100, sec. 23.

¹⁰²Picou et al. v. St. Bernard Parish School Board, (1924) (La. Crt. of App.) 132 So. 130.

the year previous to the signing of the foregoing contract, that the school board could have expected of her an immediate reply to or acceptance of her appointment. Certainly the twelve days taken up by her for deliberation was in no manner unreasonable, and constituted such delays under the provisions of our code as are to be contemplated as reasonable, and within the intention of the parties making the offer.¹⁰³

Consequently, the parish school board was ordered to pay the plaintiff the full salary for the complete term, since the time for actual performance of the duties had long since elapsed.

Grounds for nullity. A teacher's contract protects both the employer and the employee and only under rare circumstances may such documents be nullified,¹⁰⁴ except when teachers have been selected contrary to the mode and manner prescribed by law,¹⁰⁵ or without the proper qualifications.¹⁰⁶ In the Picou case the board pleaded nullity of contract because the married teacher was not authorized by her husband to sign the written acceptance of employment; the court held that if a married woman is contracted with as a teacher, the contracting board cannot later claim nullity of the agreement on the basis of lack of her authority to contract, especially when the husband joins the wife in the suit.¹⁰⁷ One cause held to

¹⁰³Ibid., p. 132.

¹⁰⁴Opinions of the Attorney General of Louisiana, May 1, 1914, to May 1, 1916, p. 388.

¹⁰⁵Ibid., May 1, 1920, to May 1, 1922, p. 1037.

¹⁰⁶Ibid., p. 523.

¹⁰⁷Picou et al. v. St. Bernard Parish School Board, (1924) (La. Crt. of App.) 132 So. 130.

justify the nullity of contract was involved in the Neilson case,¹⁰⁸ in which an effort was made to collect a salary balance. After the plaintiff had taught about six weeks, the school was closed because the attendance was less than the minimum requirement of an average of ten pupils.¹⁰⁹ Thereupon, the board paid the plaintiff two months' salary but refused to pay more. The court held that when the school attendance fell below the average required by law, it was no longer legal to keep the school in progress and that the fulfillment of the contract for the scholastic year was conditioned upon the ability of the board to keep the school open. Express and implied conditions in contracts were differentiated as follows:

"They are express, when they appear in the contract; they are implied, whenever they result from the operation of law, from the nature of the contract, or from the presumed intent of the parties."¹¹⁰

Conditions in the contract were shown to be implied through two sources: the governing law forbidding operation without the minimum average attendance, and the knowledge of both contracting parties that there was danger of the school's being closed. Since it was impossible to keep the school open, the court declared the contract null on the basis that if a thing is impossible or prohibited by law, every condition of it and any agreement depending on it are void.

¹⁰⁸Neilson v. Lincoln Parish School Board, (1929) 12 La. App. 179, 125 So. 458.

¹⁰⁹Acts of Louisiana, 1922, No. 100. sec. 58.

¹¹⁰Neilson v. Lincoln Parish School Board, (1929) (La. Crt. of App.) 125 So. 459.

In another case¹¹¹ the school board had refused payment of salary on the ground that the destruction of the school building by fire was a fortuitous event, which closed the school and voided the contract. The refusal of the board to meet its legally assumed obligations was not well taken, for numbers of controlling decisions¹¹² were cited to establish the facts that the destruction of the building by fire was not a fortuitous event and that, even if it had been so considered, the contract would not have been nullified, unless the execution thereof had been rendered impossible. Accordingly, the court held that the destruction of the building was not sufficient cause for nullity of the teacher's contract.

The Salary

Bases for determining. Salaries are generally provided for in the law or stipulated in the contract, or they may be determined on quantum meruit. In the Offut case¹¹³ a teacher sued for the value of his services on the principle of quantum meruit, which method was opposed by the employing board. By reference to a former case¹¹⁴ the court said:

¹¹¹Hughes v. Grant Parish School Board, (1933) (La. Crt. of App.) 145 So. 794.

¹¹²Lehman, Stern & Co., Ltd., v. Morgan's La. & Tex. R. & S. S. Co., (1905) 115 La. 1, 38 So. 873; Dejean v. La. Western Ry. Co., (1928) 167 La. 111, 118 So. 822; Noel Bros. v. Texas and Pac. Ry. Co., (1931) 16 La. App. 622, 133 So. 830; Dallas Cooperage & Woodenware Co. v. Creston Hoop Co., (1926) 161 La. 1077, 109 So. 844; Eugster & Co. v. Joseph West & Co., (1883) 35 La. Ann. 119.

¹¹³Felix G. Offut v. Seraphin Bourgeois et als., School Directors, (1861) 16 La. Ann. 163.

¹¹⁴M. Michale v. G. G. Fournet, (1858) 13 La. Ann. 607.

The law has not fixed the amount to be paid to the teachers for their services; and, if this matter be not regulated by contract between them and the school directors, the former's services must be tested on a quantum meruit, and accordingly remunerated.¹¹⁵

Final disposition was not made, for the record did not show sufficiently the value of the services; for that reason the case was remanded for new trial. However, the court did establish that quantum meruit is the basis upon which remuneration must be made when specification is lacking in law and contract.

Another aspect of the fixing of salaries developed in 1906 when the court of appeal was called on to ascertain who had the authority to fix the salary of the superintendent of the public schools of New Orleans.¹¹⁶ The main facts in the case were that the salary of the superintendent had been raised by the school board but that the city treasurer, who was also the school board treasurer, refused to honor the increase on the ground that the board was not authorized under the law to make such raise. The court called attention to the requirements that the superintendent be a competent and an experienced educator,¹¹⁷ and it was reasoned that the law-makers could hardly have intended that such official would be required to discharge his duties without pay. The implied power of the school board to fix the salary in question was maintained by the court as follows:

¹¹⁵Felix G. Offut v. Seraphin Bourgeois et als., School Directors, (1861) 16 La. Ann. 164.

¹¹⁶State of Louisiana ex rel. Warren Easton v. Treasurer of Board of School Directors of New Orleans, (1906) 3 Orl. App. 383.

¹¹⁷Acts of Louisiana, 1902, No. 214, sec. 35.

Where the power to do any given thing is granted by the law, the means whereby this power may be exercised is likewise granted. Besides this the contemporaneous construction of the law by the officers charged with its execution, as also by the entire city authorities and its law officers, has been that the School Board had the authority to pay a salary to its Superintendent. The weight which is to be given to such contemporaneous construction is expressed in *State vs. Comptoir National, etc.*, 51 A. 1281. In that case the Court said: "In this state it has been more than once held: 'Common interpretation of statutes which have existed for a length of time will be considered, as it generally is, the correct interpretation.'" To the same effect is *State ex rel, etc. vs. Board, etc.*, 52 A. 225; and cases cited.¹¹⁸

Thereupon the court upheld the discretionary power of the board of school directors of New Orleans to fix the salary of the superintendent of the public schools of the City, and in the instant case the treasurer was ordered to pay the salary as specified by the board's pay roll for the month in question.

Concerning the fixing of salaries of teachers in general, this case¹¹⁹ also maintained that Act No. 167 of 1904 amended and re-enacted Act No. 214 of 1902 so that the pertinent section read:

That in addition to the powers and duties hereinbefore granted to and imposed upon parish boards, the powers and duties of said board of directors of the parish of Orleans shall be as follows:

First. It shall adjust and fix equitably the salaries of teachers and janitors, secretary, employees, and of such assistant superintendents as it may deem necessary for an efficient supervision of the school.¹²⁰

¹¹⁸*State of Louisiana ex rel. Warren Easton v. Treasurer of Board of School Directors of New Orleans*, (1906) 3 Orl. App. 391.

¹¹⁹*Ibid.*, p. 383.

¹²⁰Acts of Louisiana, 1904, No. 167, sec. 73.

Under section 1 of Act No. 110 of 1928, parish school boards are clothed with the authority to fix teachers' salaries but they are required to develop an equal basis schedule for both men and women.¹²¹

Honoring of warrants by treasurer. It seems not to have been questioned that the school directors have power to issue warrants on the parish treasurer for the payment of teachers' salaries and that the parish treasurer is legally bound to honor such warrants, but the question has been raised as to whether a de facto board has such power. This principle was involved in the Miahle case¹²² in which a suit was instituted to collect a salary from the school board treasurer of St. Martin Parish, which official had refused to honor the warrant because it was authorized by a board whom he charged as not having been elected and not having qualified. The court held that the members of the board were de facto directors and recognized as such, and that "the treasurer would have been justifiable in paying the warrant, for it would have been a valid voucher for the payment of the money represented by it."¹²³ In approving the teacher's right to collect his salary according to the order of the de facto board, the court maintained as directory the law which provided:

¹²¹Opinions of the Attorney General of Louisiana, May 1, 1928, to April 30, 1930, p. 542.

¹²²M. Miahle v. C. C. Fournet, (1858) 13 La. Ann. 607.

¹²³Ibid., p. 608.

That each warrant drawn for the salary of any Teacher shall be accompanied by a statement of the directors, showing the number of schools in the district, the number of children taught, the number of children who do not attend school, and the monthly rate of compensation to the Teacher.¹²⁴

No statement of the described nature accompanied the warrant, and for this reason also the treasurer refused to pay. The court designated the statement as not being an adjunct so necessary to the warrant that payment could not be made without it.

Further, the treasurer accused the teacher of exacting from the parents extra compensation of one dollar per month per pupil. Since this complaint was not properly brought by interested parties, the court held that it did not constitute a defense to payment of the salary. It was pointed out, however, that such action by the teacher furnished good grounds for complaint to the directors.

Protection from garnishment. The salary of a teacher in the public schools is exempt from seizure to satisfy a judgment. Section 1 of Act No. 166 of 1908 has been interpreted to fix the status of a teacher in the public schools as an officer; thereupon the salary of this individual is held exempt from garnishment.¹²⁵ In 1929 the court of appeal was called upon to decide if public school funds set aside to pay teachers' salaries may be legally garnisheed by a teacher's

¹²⁴ Acts of Louisiana, 1855, No. 321, sec. 11.

¹²⁵ Fifth Avenue Library Society v. Miss Hortense Kilshaw, (1910) 7 Or1. App. 496.

creditor while said funds are in the possession of the board.¹²⁶ In rendering the decision, which protected the teacher's salary from garnishment and allowed the board to resist successfully any action against salaries, it was shown that such decision is in keeping with the view held in other cases¹²⁷ which have maintained that as a matter of public policy it is generally held that salaries of public officials are exempt from garnishment.

Pertaining to teachers proper and not to officials in general, the court gave as the final basis for its decision an explanation made by the supreme court of Utah and stated that it included the reasons generally assigned for holding teachers' salaries exempt from seizure under garnishment process. The rather lengthy excerpt was as follows:

"But there is another reason why the contention of counsel cannot avail the appellant. In the case at bar the defendant Watters was a teacher in one of the public schools in the city of Ogden, regularly employed by the board of education, which board was created by authority of the legislature for the benefit of the public. Thus employed, he was a public servant, receiving a stipulated salary; and no portion of such salary, so long as the money remained in the hands of the board, was subject to the process of garnishment. There is perhaps no class of persons more intimately connected with the welfare of the municipality than the teachers in the public schools. Their labors are of interest to the entire body of the people. As a general rule they belong to that class of persons who depend upon their salaries for the support of themselves and families. As a class, they are honorable, industrious public servants, and are generally poorly paid. If their wages intended for the support of those dependent

¹²⁶Bank of Winnfield v. Brumfield et al., (1929) 11 La. App. 647, 124 So. 628.

¹²⁷Fischer v. Dubroca, (1927) 163 La. 292, 111 So. 710; Dunbar v. Dinkgrave et al., (1855) 10 La. Ann. 545; Fifth Avenue Library Society v. Miss Hortense Kilshaw, (1910) 7 Orl. App. 496.

upon them were subject to the process of garnishment, the public might be deprived of their services at any time, and suffer great inconvenience because of interruptions in the management of the schools which would thus occur. The children of the country cannot be educated without competent teachers, and those teachers, usually devoting their whole time to their vocation, must have the necessaries of life; and their salaries ought not to be subject to process which will tie them up, in the hands of a board of education, for an indefinite length of time, in disregard of the public interest. The territory has undertaken to establish, at great expense, a system of public schools, and it cannot allow the wages of the teachers to be intercepted, at the risk of the efficiency of the system being thereby impaired."¹²⁸

Prescriptive periods of collection. In a case in 1933 the basis claimed for refusal to pay a teacher's salary was prescription of one and two years.¹²⁹ The court found no two-year prescription applicable to salaries of school teachers. The one-year prescription was pleaded on the ground that actions of masters and instructors in the arts and sciences for lessons by the month are prescribed by one year. The court's reply was:

The fact that the employment in the present case was for a term of eight months and not by the month makes the one-year prescription inapplicable, and relieves us of the unpleasant necessity of deciding whether or not a grade school teacher is a master and instructor in the arts and sciences.¹³⁰

With respect to three-year prescription applicable to actions for salaries of certain employees, among whom are teachers of

¹²⁸Bank of Winnfield v. Brumfield et al., (1929) (La. Crt. of App.) 124 So. 630-631.

¹²⁹Hughes v. Grant Parish School Board, (1933) (La. Crt. of App.) 145 So. 794.

¹³⁰Ibid., p. 796.

the sciences who give lessons by the year or quarter, and concerning the disposition of the prescription plea, the court stated:

The three-year prescription, not having been pleaded and not having accrued, need not be considered. The plea of prescription was properly overruled.¹³¹

Removal

Only legal method justified. The law¹³² governing the removal of teachers states that upon the basis of a proper hearing a teacher is subject to be discharged for incompetence, inefficiency, or unworthiness. Under the law the school board is the final authority in completing the process of employing teachers, but when once a contract is duly executed the board has no right to remove a teacher without cause.¹³³ Since the causes for dismissal are named in the statute, the court has held that no other cause is sufficient except one recognized by law as avoiding all contracts.¹³⁴ These standards for discharge were maintained in answer to a school board's contention that the words, "unless sooner discharged," included in the contract made the contract terminable at their will and thereby gave them authority to discharge the teacher at any time. The court explained that the contract was in no way enlarged by the

¹³¹Ibid.

¹³²Acts of Louisiana, 1922, No. 100, sec. 48.

¹³³Brown v. St. Bernard Parish School Board, (1930) 14 La. App. 460, 131 So. 760.

¹³⁴Hughes v. Grant Parish School Board, (1933) (La. Crt. of App.) 145 So. 794.

additional words, for they were not equivalent to specifying other than legal grounds for discharge.¹³⁵

Conditions requiring payment of salary. In 1924 the court of appeal¹³⁶ was called upon to decide whether a teacher removed from her teaching position during the scholastic year without cause was entitled to the balance of her contracted salary. It seems that the teacher in question had been duly employed, under Act No. 120 of 1916, as principal in the colored school of Verretville and that after having taught for a short while at said school she was ordered by the board to discontinue her services. Since the facts revealed that the teacher had been removed without any legal cause whatsoever, the court decreed judgment in her favor for the year's salary as agreed to in the contract.

A similar principle was involved in the Sessions case of 1934.¹³⁷ In this controversy the plaintiff, whose teaching service was discontinued because of the scarcity of funds, entered suit against the school board for the balance of her contracted salary. In approving of her right to collect said salary for the school year with interest from date of judicial demand, the court held that the discretionary powers of the school board did not imply the right to discharge a teacher under contract merely because of lack of funds but only under

¹³⁵Ibid.

¹³⁶Picou et al. v. St. Bernard Parish School Board, (1924) (La. Crt. of App.) 132 So. 130.

¹³⁷Sessions v. Livingston Parish School Board, (1934) (La. Crt. of App.) 153 So. 484.

the conditions as provided¹³⁸ by statute--that before the teacher was employed there should have been determined the number of teachers to be used.

In 1933¹³⁹ the court was confronted with the question of the amount of salary that a teacher could demand when employed by the month. The teacher involved had been employed by the month for the session of 1931-1932, but the board rescinded its action employing her and notified her to that effect four days before the opening of the school term. The district court had awarded the teacher one month's salary. In affirming this judgment the court of appeal said:

Her payment having been stipulated at so much, and the employment being by the month, her compensation became payable by the month, which was the period fixed, and it cannot be construed into a question of monthly payments for a longer period. From the testimony admitted by the lower court to show the reason which actuated the school board in rescinding her appointment, it would appear to us that Miss Cupit was dealt with a bit harshly, but still under the nature of her employment, which was by the month, the board had the right to dispense with her services without any cause, at the end of any month. She presented herself at the Pickering High School to which she had been assigned, on the opening day of the term in September, 1931, and offered her services which were refused. She had relied on being employed there, and had not attempted to secure another position. The district judge held that she was entitled, therefore, to recover the salary due for that month, and accordingly rendered judgment in her favor for the sum of \$35.¹⁴⁰

¹³⁸Acts of Louisiana, 1922, No. 100, sec. 48.

¹³⁹Cupit v. Vernon Parish School Board, (1933) (La. Crt. of App.) 145 So. 391.

¹⁴⁰Ibid., p. 392.

In the same year the court of appeal rendered judgment for a teacher who had a written contract to recover the remainder of a session's salary. The board contended that the provision, "for a term of eight months, unless sooner discharged, at \$60.00 per month of actual employment payable monthly," placed responsibility for them to pay the teacher only when she was actually teaching, but the court held that the term "actual employment" as used meant legal employment, and that since she had been dismissed without cause, she was entitled to recover her salary with legal interest from time of her discharge for the unexpired term of legal employment.¹⁴¹

Unearned salary matured by dismissal without cause.

It has been shown that under certain conditions a teacher's contract may be nullified and the teacher be removed without the board's having to pay the balance of the contracted obligation; in other cases where teachers were removed without cause, the salaries were collectable for the duration of the contract or for the unexpired term, whether any teaching had or had not been done. Also, the question has arisen as to what effect the discharge of a teacher has on that part of the salary not earned prior to dismissal. The court of appeal was confronted with this question in the Hughes case;¹⁴² it was held that the discharge of the teacher without cause matured

¹⁴¹Hughes v. Grant Parish School Board, (1933) (La. Crt. of App.) 145 So. 794.

¹⁴²Ibid.

any unpaid salary due her--that she was entitled to recover at date of discharge the entire salary, as if she had taught the school as per contract.

Certificates of Indebtedness

Certificates of indebtedness issued to teachers for their services in the public schools of New Orleans during approximately the last quarter of the nineteenth century seem to have gone fairly well into circulation as commercial paper. Attempts by the holders to liquidate these certificates were the bases of several litigations, some of which were of long duration and carried through not only the state supreme court but also the Federal District and the United States Supreme Court. The judicial judgments rendered established various characteristics, methods of liquidation, identification requirements, and protective rights.

Nonresponsibility of the city for liquidation. The certificates were not liabilities of the city of New Orleans: the whole system of public schools during that period was decidedly a state institution--a natural result of the centralizing policies of Reconstruction.¹⁴³

Bonds issued for the purpose of liquidating the indebtedness of the city were adjudged as not a source of liquidation of the certificates for the years 1874, 1875, and 1876;

¹⁴³Caroline Labatt v. City of New Orleans, (1886) 38 La. Ann. 283; Mrs. M. M. Fisher and Husband v. Board of Directors of City Schools of New Orleans et al., (1892) 44 La. Ann. 184, 10 So. 494.

in fact, the statute¹⁴⁴ which attempted to place the unpaid salaries of teachers subsequent to 1872 and prior to January 1, 1880, with the indebtedness to be secured by the issuance of city bonds was declared unconstitutional.¹⁴⁵ According to a lower court decision confirmed by the Circuit Court of Appeals, Fifth Circuit, the board of liquidation of the city was not permitted to issue city bonds for the amount of the certificates for which the holders had obtained judgment against the school board.¹⁴⁶ Also, a claim to have the certificates redeemed out of the surplus bond fund levied under Act No. 136 of 1894 was denied and the act itself, which attempted to divert from its created purpose the tax of one-half of one per cent for the support and maintenance of the New Orleans schools, was declared unconstitutional.¹⁴⁷

With respect to the payment of teachers for services rendered in 1882, 1883, and 1884, the city seems to have accepted more responsibility. Acting under and by virtue of the provisions of articles 315, 316, and 317 of the Constitution of 1898, the city council assumed payment of the teachers for these years and through the city comptroller issued certificates of indebtedness for this purpose to the amount

¹⁴⁴Acts of Louisiana, 1880, No. 74, sec. 3.

¹⁴⁵Caroline Labatt v. City of New Orleans, (1886) 38 La. Ann. 283.

¹⁴⁶United States ex rel. Fisher et al. v. Board of Liquidation of City Debt of New Orleans, (1894) (Cir. Ct. of App.) 60 Fed. 387.

¹⁴⁷Mrs. M. M. Fisher v. Board of School Directors, (1896) 48 La. Ann. 1077, 20 So. 163; United States ex rel. Fisher v. Board of Liquidation of City Debt, (1896) (Cir. Ct. of App.) 75 Fed. 543.

of \$115,558.53. According to organic provision, the funds necessary to pay these claims were to be secured through the sale of a sufficient number of the constitutional bonds based on a tax of one per cent provided for by "Act No. 110 of the General Assembly for the year 1890, and by the amendment to the Constitution of the State submitted to the people by said act and adopted at the general election in 1892."¹⁴⁸ When such certificates were presented for payment, the city board of liquidation refused to remit the respective amounts on the ground that the sale of bonds for this purpose violated the obligations of contracts; thereupon the soundness of this plan was brought to the courts for test.¹⁴⁹ Again the court said that these certificates did not represent debts of the city and explained: "The effect of the adoption of that amendment was not to constitute those claims ipso facto debts of the city. The city only became committed to payment of the same by its subsequent voluntary act."¹⁵⁰ The board of liquidation was ordered to pay the sums requested by the city council with the provision that the teachers' claims be held subordinate to the claims of creditors vested with contract rights at the date of the adoption of the Constitution of 1898. In 1905,¹⁵¹

¹⁴⁸Constitution of Louisiana, 1898, art. 317.

¹⁴⁹State ex rel. Wilder et al. v. Board of Liquidation of City Debt et al., (1899) 51 La. Ann. 1849, 26 So. 679.

¹⁵⁰Ibid., 51 La. Ann. 1867.

¹⁵¹State ex rel. Wilder et al. v. Board of Liquidation of City Debt, (1905) 115 La. 471, 39 So. 448.

similar claims were presented for the years 1885, 1886, and 1887. By that time the \$10,000,000 of bonds provided for in Act No. 110 of 1890 had been issued in full, and the plaintiffs' request was that the need be met by a sale of bonds drawn against the surplus of the one per cent tax. In response the court showed where the constitution¹⁵² had specially dedicated this surplus and thereby indicated that the redemption of such certificates was to come from the sale of a particular issue of bonds. The creditors in the instant case were told that their remedy would have to be legislative and not judicial, for the court was not empowered to order the city to issue and sell additional bonds under the circumstances, when the city had not agreed to make provision for the liquidation of certificates for the particular years.

In a later attempt to secure payment of certificates through the city it was pointed out that in the city council was vested the discretionary power to determine the annual levy of not less than one-fourth of one per cent necessary to provide for the support of the public schools, and that the courts would not compel the city council to levy a special tax to liquidate a judgment previously granted for an alleged indebtedness against the school board of the city.¹⁵³

¹⁵²Constitution of Louisiana, 1898, arts. 254, 313-314.

¹⁵³State ex rel. Fisher et al. v. Mayor, etc., of City of New Orleans, (1908) 121 La. 762, 46 So. 798; John B. Fisher, James M. Fisher, William G. Fisher, et al., Plaintiffs in Error, v. Mayor and Council of City of New Orleans, (1910) 218 U. S. 438, 51 S. C. 57, 54 L. Ed. 1099.

Responsibility of the board of school directors for liquidation. The holders of the certificates were exclusively creditors of the New Orleans Board of Directors of the Public Schools by whom the certificates were issued; therefore, claims for the years 1872 to 1879, inclusive, could be presented only against the uncollected taxes representing the appropriations of the respective years of the issues. The extent of the city's responsibility was the collection by its treasurer, who was also ex officio treasurer of the school board, and the proper distribution of the amounts received.¹⁵⁴ Consequently, judgments were granted against the school board but not against the city for the amounts of valid certificates when the claims had been properly presented, the judgments to be paid only when sufficient amounts had been collected.¹⁵⁵ In one of the cases attention was called to the statute¹⁵⁶ which made school certificates previously issued receivable for any taxes due prior to 1879 and to the fact that this had the effect of creating one fund for liquidating school indebtedness prior to 1879.¹⁵⁷

¹⁵⁴Caroline Labatt v. City of New Orleans, (1886) 38 La. Ann. 285; Mrs. M. M. Fisher and Husband v. Board of Directors of City Schools of New Orleans et al., (1892) 44 La. Ann. 184, 10 So. 494; F. J. Casquet v. Board of Directors of City Schools, (1893) 45 La. Ann. 342, 12 So. 506.

¹⁵⁵Mrs. M. M. Fisher and Husband v. Board of Directors of City Schools of New Orleans et al., (1892) 44 La. Ann. 184, 10 So. 494; F. J. Casquet v. Board of Directors of City Schools, (1893) 45 La. Ann. 342, 12 So. 506; Mrs. M. M. Fisher v. Board of School Directors, (1896) 48 La. Ann. 1077, 20 So. 163.

¹⁵⁶Acts of Louisiana, 1880, No. 49, sec. 1.

¹⁵⁷Mrs. M. M. Fisher and Husband v. Board of Directors of City Schools of New Orleans et al., (1892) 44 La. Ann. 184, 10 So. 494.

When the various certificate holders who had been granted judgments for the amounts of their claims attempted to collect, a judicial accounting of the amount which the city was due the school board from taxes collected for 1871 to 1879, both inclusive, was occasioned. The chief point at issue was the city's refusal to include in the amount due the school board the funds derived from the penalties of delinquency. This controversy was appealed from the circuit court to the United States Circuit Court of Appeals for the Fifth Circuit¹⁵⁸ and was called by writ of certiorari to the Supreme Court of the United States.¹⁵⁹ In the various decisions it was held that the interest as penalty was an accessory of the principal and belonged to the same authority as the principal; the amount thus found to be due the school board by the city was \$71,938.78. In addition, the city was ordered to pay five per cent interest on the majority of that amount from judicial demand until paid and on the remainder from the time it was collected--subsequent to the filing of the suit--until paid.

A change in the status of certificates of indebtedness as a responsibility of the Orleans Parish School Board seems to have been accomplished by legislative enactment in 1912 through the provisions:

¹⁵⁸City of New Orleans v. Fisher et al., (1899) (Cir. Ct. of App.) 91 Fed. 574.

¹⁵⁹City of New Orleans, Petitioner, v. John Fisher, Tutor, etc., et al., (1901) 180 U. S. 185, 21 S. C. 347, 45 L. Ed. 485.

. . . in the parish of Orleans the budget of expenditures shall not exceed (95 per cent) ninety-five per cent of said budget of revenues; . . .

Be it further enacted, etc., That in the Parish of Orleans at the end of the year after payment of all the indebtedness budgeted, the school board shall apply said surplus of (5%) five per cent to any indebtedness of previous years reduced to final judgments liquidating and fixing the amount of indebtedness, whether the judgments be absolute or limited to the revenues of any year.¹⁶⁰

With reference to this statute the court has said:

Whatever may have been the status of these school certificates under the statutes and jurisprudence prior to the year 1912, it seems clear that a radical change was produced therein by the enactment of Act No. 214 of that year. Section 68, paragraph (b) of the act plainly gave (or recognized) a cause of action on such certificates before the funds might be collected . . .¹⁶¹

Similar statutory provision in 1916 merely reduced the percentage to be applied for this purpose.¹⁶²

Regulations pertaining to endorsements and prescription. When certificates of indebtedness were endorsed they often passed from one person to another as marketable securities and both the state and the city followed the policy of recognizing the holder of a certificate as the one entitled to collect therefor, without any particular proof of the genuineness of the endorsement. The custom of the city and state not to pay without the production of the certificates was a protection against double demands. The courts have taken a different attitude and have demanded that there be proof of the assignment

¹⁶⁰Acts of Louisiana, 1912, No. 214, sec. 68.

¹⁶¹Martinez v. Orleans Parish School Board, (1924) 155 La. 118.

¹⁶²Acts of Louisiana, 1916, No. 120, sec. 56; Martinez v. Orleans Parish School Board, (1924) 155 La. 116, 98 So. 860.

or endorsement of certificates of indebtedness in the recognition of a claim or in liquidation through judicial demand.¹⁶³

At times the defendant school board has pleaded prescription as a reason for nonpayment. When in 1893 it was held that the certificates for 1872 to 1879, inclusive, were payable only out of the revenues of the years for which they were issued, the school board was refused protection through prescription, since it was not shown that there had been at any particular time funds in the school board treasury applicable to the payment of such claims.¹⁶⁴ In the second appeal of the Martinez case¹⁶⁵ the former decision¹⁶⁶ pertaining to prescriptive rights was held to be the law of the latter case. The plaintiff in 1924 sought liquidation of certificates issued in 1874, 1875, and 1876; the basis of his claim was the provisions of the controlling legislative act of 1912.¹⁶⁷ The defendant board pleaded prescription of ten years, but the court explained that the plaintiff's right of action did not arise until the adoption of the act of 1912 and held that since the suit was brought within ten years after the passage of the act, prescription would not hold to prevent the plaintiff's presentation of his claim.

¹⁶³*P. J. Gasquet v. Board of Directors of City Schools*, (1893) 45 La. Ann. 342, 12 So. 506; *Martinez v. Orleans Parish School Board*, (1931) 173 La. 114, 136 So. 287.

¹⁶⁴*P. J. Gasquet v. Board of Directors of City Schools*, (1893) 45 La. Ann. 342, 12 So. 506.

¹⁶⁵*Martinez v. Orleans Parish School Board*, (1931) 173 La. 114, 136 So. 287.

¹⁶⁶*Martinez v. Orleans Parish School Board*, (1924) 155 La. 116, 98 So. 860.

¹⁶⁷*Acts of Louisiana*, 1912, No. 214, sec. 68.

SUMMARY

Professional agencies of control in the public school system of the state have been presented in two main groups: the superintendents--state, division, and parish--and the teachers.

Superintendents

The superintendents seem to have served as a connecting link between the nonprofessional agencies of control, state and parish, and the schools proper. The chief policies pertaining to them in their capacity of professional agencies appear to be the following:

1. The state superintendent of public education as an agency of control originated through the secretary of state's office in 1833 when the holder of that office was charged with the direction of the public schools of the state.

2. The Constitution of 1845 provided for the appointment by the governor of a state superintendent of public education with such powers and duties as the legislature might prescribe; this authorization was enacted in the general education law of 1847.

3. Apparently the state reluctantly accepted centralized supervision, for in the constitutional conventions until near the close of the nineteenth century many efforts were made to abolish, or restrict the powers of, the state superintendent.

4. Since approximately the beginning of the present century the theory of state control of education seems to have been well adopted and with it the state superintendent has been accepted as the chief agent. Since 1852 this officer has been elective by the people.

5. It seems significant that the state superintendent, clothed with his many vested powers, has functioned for more than a century with only very little interference from the judiciary.

6. As a ministerial officer of the state the superintendent has a standing in court only through the state's attorneys.

7. The division superintendent of public education functioned in a supervisory capacity, but since this office was a product of Reconstruction, it passed with that period.

8. The parish superintendent of schools became a part of the controlling force of public education in 1847 but apparently the state was not ready for this form of professionalized supervision of its schools, for the office was abolished in 1852 and did not appear again in any form until 1877, at which time the parish board was directed to select a secretary which officer in 1882 assumed through statutory authorization the duties of parish superintendency.

9. One indication that the populace was reticent to accept professionalized supervision of public schools was the meager salary of parish superintendents until after the beginning of the present century.

10. Since the parish superintendent is a product of the parish school board, he is expected to carry out its policies in cooperation with the state board of education.

11. The parish superintendent is legally and generally accepted as an integral part of the supervisory program of public education, but his status has not been that of a public officer since the Constitution of 1921 removed the requirement that he be an elector of the parish in which he serves.

12. It has been established that the parish superintendent must be selected by viva voce vote of the parish board and that his election must be for four years, but the board has been granted discretionary power in fixing the salary of this employee.

13. The official acts of de facto parish superintendents are legally sound.

14. The parish superintendent may be removed only on the established charge of incompetency, inefficiency, or unworthiness.

Teachers

Public school teachers are accepted as the chief professional agency through which the educational policies of the state are finally carried out. The dominant principles which have directed the work of the teachers appear to be the following:

1. Certification of the eligibility of teachers was early recognized as a necessity. This feature was locally

controlled until the present century since which time the state board of education has been clothed with complete authority.

2. The employment of teachers is discretionary with the parish school board after nominations have been made by the parish superintendent, and teachers are subject to the control of their employing boards.

3. Indefinite duration of contracts has been disapproved, although recent legislation for such special provision in New Orleans has been endorsed by the attorney general.

4. The teacher's contract is an essential feature for both the employee and the employer. Employment by the month may be through verbal contract, but a valid contract for a year or more must be in writing. A reasonable length of time for acceptance must be granted the teacher.

5. Rarely have the courts consented to the nullity of contracts and then only upon the establishment of good reasons therefor.

6. Specification of the amount of salary is generally included in the contract between the teacher and the employing board, but if no salary is mentioned in the contract, the teacher may secure remuneration through the method of evaluation of services by quantum meruit. Since a recent date boards are required to fix salaries on an equal basis schedule for both men and women.

7. Warrants for teaching service are drawn by the school directors on the parish treasurer and said official must honor these warrants whether the issuing board be de facto or de jure.

8. The salary of a teacher is not subject to garnishment by the teacher's creditors while the funds are in the possession of the school board.

9. Attempts to prevent the collection of teachers' salaries on the basis of prescription seem to have been unsuccessful.

10. The state's policy has been that of reluctance in removing teachers under contract. Where removal has become necessary, it has been legally executed only after proper hearing, and the causes as specified by statute have been held restrictive.

11. The policy which requires payment of the contracted salary, whether earned or unearned, when a teacher has been dismissed without cause has been consistently upheld. This principle refers to a session's or a month's salary, according to employment by the session or the month.

12. In the comparatively large number of suits seeking liquidation of the certificates of indebtedness issued to New Orleans teachers during the last quarter of the nineteenth century, several principles pertaining to the certificates, which had become practically commercial paper, were established as follows: (a) they were not responsibilities of the city, and payment could be expected of the city only through its voluntary act; (b) they were responsibilities of the board of school directors issuing them, were payable out of the taxes of the respective years of issuance only, and were receivable for the payment of taxes of specified dates; (c) by 1912

legislative enactment changed the status by providing a specified surplus for the liquidation of certificates of any dates reduced to final judgments; (d) legal transactions with certificates required authentic endorsements; and (e) prescriptive claims must date to the time that funds were actually available or when satisfactory provision for liquidation was made.

CHAPTER IX

SCHOOL DISTRICTS AND PROPERTY

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Since the state has a right to establish, maintain and control a system of public schools, it has by implication, as a means of administration thereof, the right to organize the state into districts which may act as bodies politic to deal with such problems as the building program and its maintenance, the supervision of school property, and the direction of other educational functions of the state system.¹ The purpose of this chapter is to determine the Louisiana law which deals with the organization of school districts and the control of the school property therein. An attempt is made to show how court decisions and legal opinion on constitutional and statutory provisions have influenced the shaping of the policies which have been pursued by those in charge of school districts and the property used for school purposes.

SCHOOL DISTRICTS

Constitutional provisions pertaining to school districts were chiefly implied. In the Convention of 1852 one of the substitutes offered for the majority report of the committee on public education included:

¹Hermann H. Schroeder, Legal Opinion on the Public School as a State Institution (Bloomington, 1928), pp. 36-37.

The Legislature shall provide for a system of Common Schools, by which a school shall be kept up and supported in each District, at least three months in every year; and any School District neglecting to keep up such a school, may be deprived of its proportion of the interest in the school fund during such neglect.²

In the constitution adopted by the delegates to this convention the parish was recognized as a school district by the provision that the school funds were to be distributed "to each Parish in proportion to the number of free white children between such ages as shall be fixed by the General Assembly."³

A desire by taxpayers for more autonomous privileges was evidenced in the petitions presented to the Constitutional Convention of 1898; one petition which bore fourteen signatures recommended "That the Constitution should provide more latitude for local taxation for school purposes, and that each parish, ward, and municipality should be allowed to tax itself for such purpose."⁴ In this convention an unsuccessful attempt was made to "provide for the creation of boards for school districts in the several parishes."⁵ However, in the final draft of the constitution, the general assembly was authorized to provide for the creation of "Parish Boards of Public Education,"⁶ and it was directed that the funds derived from the

²Journal of the Convention to Form a New Constitution for the State of Louisiana, 1852, p. 84.

³Constitution of Louisiana, 1852, art. 136.

⁴Official Journal of the Proceedings of the Constitutional Convention of the State of Louisiana, 1898, p. 40.

⁵Ibid., p. 290.

⁶Constitution of Louisiana, 1898, art. 250.

collection of the poll tax in each parish be paid to the local school board for school purposes.⁷ Also, in the provisions for bond issues and special taxes, the school district was recognized.⁸

From the foregoing it may be seen that the constitutions of the state have been silent, except by implication, with regard to the school district. Consequently, its authorization is based on the theory of law whereby a state legislature may enact any measure which violates neither the state nor the Federal Constitution,⁹ and to the statutory acts and their interpretations by the courts one must look for the law pertaining to school districts.

Nature and Purpose

Various studies involving the nature of the school district have determined it to be a quasi corporation.¹⁰ In a treatment of public school expenditures, Joakim F. Weltzin concluded with respect to the nature of the public school district:

Public corporations may be divided into three groups, quasi-public, municipal and quasi corporations. School districts and school boards belong in the last group. The statutes of many states expressly make the school districts and boards bodies

⁷Ibid., art. 252.

⁸Ibid., art. 281.

⁹Ralph Yakel, The Legal Control of the Administration of Public School Expenditures (New York, 1929), p. 10.

¹⁰Newton Edwards, The Courts and the Public Schools (Chicago, 1933), p. 34.

corporate; others merely infer that character. Judicial expression with practical universality term the school district and board a quasi corporation, which means that they are not complete corporations but are bodies granted corporate character for the limited purpose of their creation only.¹¹

As generally considered the school district is the "intrusted agent of the state,"¹² formed for the purpose of maintaining public schools. Its corporate power extends only to such matters as are necessary to assure the fulfillment of its created purpose.¹³

Louisiana's theory of the purpose of the district was explained in the following reply to a complaint that the resolution creating a certain district did not state the purpose thereof:

As a matter of law, and of common experience, it is well known that school districts are created for the purpose of levying special taxes, and of incurring debt and issuing bonds for the various school purposes enumerated in the Constitution of the state. Const. 1913, arts. 232, 281; Const. 1921, Sec. 10, art. 10, sections 14(a) and 14(b), art. 14; Act 46 of 1921 (Ex. Sess.) Sec. 8.¹⁴

Also, it was maintained in this case that, since the governing statute¹⁵ placed no limitation concerning purpose

¹¹Joakim F. Weltzin, The Legal Authority of the American Public School (Grand Forks, 1930), p. 29.

¹²Fred Engelhardt, Public School Organization and Administration (Boston, 1931), p. 28.

¹³Harvey C. Voorhees, The Law of the Public School System of the United States (Boston, 1916), p. 23.

¹⁴Gauthier et al. v. Parish School Board of Parish of Avoyelles, (1928) 165 La. 260.

¹⁵Acts of Louisiana, 1920, No. 152.

and did not require a statement of the purpose in the resolution of creation, an established district must be recognized as having been created for all purposes enumerated by the constitution.¹⁶

Establishment

In carrying out Louisiana's program of public education the state has provided, mainly through statutory enactments, for the incorporation of school districts in order that the people residing therein may, as an associated body, establish and maintain free public schools as authorized by the law.

Parish school board's discretionary powers. For many years the incorporation of school districts has been one of the discretionary powers entrusted to the parish school boards of the state.

An illustration of this power concerning districts is shown in the Burnham case;¹⁷ therein the authorization of a special levy was attacked on the ground that the school board was without power to create the district in which the tax was levied until the parish had been divided into districts. Plaintiffs based their contention on the statutory provision:

That it shall be the duty of the parish board with the parish superintendent to divide the parish into school districts of such proper and convenient area and shape as will best accommodate the children of the parish. The parish board shall, as soon as practicable, proceed to the work im-

¹⁶Gauthier et al. v. Parish School Board of Parish of Avoyelles, (1928) 165 La. 256, 115 So. 479.

¹⁷Burnham et al. v. Police Jury of Claiborne Parish, (1902) 107 La. 513, 32 So. 87.

posed upon them, and upon completing this work, they shall make a report to the parish superintendent, which report shall contain the boundary and description of the said district designated by number. The parish superintendent shall record the same in a well bound book, kept by him for the purpose, which book shall be held by said parish superintendent and be at all times open to inspection. The parish board, if they deem it to the best interests of the schools, may divide the parish into districts without reference to the wards in the parish.¹⁸

It appears that the way in which the school board of Claiborne Parish complied with this law was to pass a resolution each year designating the schools by wards and authorizing the apportionment of funds accordingly. The court held this to be sufficient compliance, if only the distribution of funds was concerned, but labelled the method as extremely informal and slipshod. Since those who brought this suit were not interested parties, the court gave no heed to them, but indicated its philosophy concerning the creation of the district thus:

It will be time enough to consider the question when the parents or guardians of the excluded children complain, though we surmise it will then probably be found that the matter of fixing the limits of school districts has been confided by the statute to the school boards, and that the discretion thus confided cannot be controlled by the courts.¹⁹

This principle is maintained also in the Drouin case²⁰ in which an attack was made on the action of the school board in carving one district out of another. The authority

¹⁸Acts of Louisiana, 1888, No. 81, sec. 11.

¹⁹Burnham et al. v. Police Jury of Claiborne Parish, (1902) 107 La. 516.

²⁰Drouin et al. v. Board of Directors of Public Schools of Parish of Avoyelles, (1915) 136 La. 393, 67 So. 191.

under which the board acted was the 1912 statute which states: "It shall be the duty of the parish board with the parish superintendent to divide the parish into school districts of such proper and convenient area and shape as will best accommodate the children of the Parish."²¹ Before rendering final jurisdiction the court reviewed its policy of recognizing school boards as quasi corporations and of interpreting broadly their power in advancing the educational welfare of their respective districts.²² This policy was further upheld in the case at bar as follows:

And this power to create districts includes the power to create new districts out of old ones or to consolidate two or more districts already formed, and to repeal the ordinance creating any one or more districts. The discretion vested in the parish board in forming school districts cannot be controlled by the courts, where it is not shown that this discretion has been grossly abused.²³

Although the parish board of school directors is conceded as having broad discretionary power in the establishment of school districts, it must recognize enacted prohibitory law pertaining to the creation of such districts. By the enactment of a law in 1920,²⁴ the creation of districts which were to be overlapping with respect to other created districts, composed of parts of the parish, was prohibited. Ordinances

²¹ Acts of Louisiana, 1912, No. 214, sec. 13.

²² Burnham et al. v. Police Jury of Claiborne Parish, (1902) 107 La. 513, 32 So. 87; Moore v. Board of Directors of Sabine Parish, (1912) 131 La. 757, 60 So. 234.

²³ Drouin et al. v. Board of Directors of Public Schools of Parish of Avoyelles, (1915) 136 La. 398.

²⁴ Acts of Louisiana, 1920, No. 152, sec. 2.

of the Winn Parish School Board purporting to create certain districts contrary to this provision were declared null and void.²⁵

Again, in 1927, the school board's discretion in the creation of districts was upheld when, in answer to charges concerning the condition of roads, the designated limits of the district, and the board's proceedings,²⁶ the court said: "It would require proof of a gross abuse of discretion to justify a court in interfering with the creation of a school district . . . The record in this case does not disclose such an abuse."²⁷

The school board's use of its power in the creation of districts may be questioned by those who have a constituted right, but it is the court's policy to place responsibility for proof of statement upon those who complain. For example, if there is the charge of illegal creation of a district, the plaintiff must prove his allegation rather than expect the school board to prove the legality of its use of power in the particular action.²⁸

Thus, it may be seen that the state's legal interpretations have been consistent in maintaining a very high regard for the discretionary power of the parish school

²⁵Hinton et al. v. Winn Parish School Board, (1924) 155 La. 666, 99 So. 523.

²⁶Sylvestre et al. v. St. Landry Parish School Board, (1927) 164 La. 204, 113 So. 818.

²⁷Ibid., 164 La. 211-212.

²⁸Milton et al. v. Lincoln Parish School Board, (1922) 152 La. 761, 94 So. 386.

board and have nullified the boards' ordinances of creation only when they were prohibitory of the governing statute.

Creation of inter-parish districts. Adjudications concerning the power to create inter-parish school districts seem to have been sought mainly from the attorneys general of the state. The policy of the state's legal counsel toward this question was traced by one attorney general as follows:

. . . while there was contained in the various general educational bills up to the passage of Act 152 of 1920 a provision to the effect that adjoining parishes might, when convenience required it, lay off school districts composed of portions of two adjoining parishes, these provisions had always been interpreted by this office as conferring no authority for special school tax elections and bond issues in such inter-parish school districts, but as authorizing the creation of same for the purpose of convenient school administration, only.²⁹

With reference to the supreme court's having held that the legislature was authorized to provide for the creation of school districts, and in endorsing the constitutionality of the act permitting districts to be composed of parts of two parishes, he said:

The matter was then, as we see it, one of legislative discretion as to the manner of creating school districts, and, exercising that discretion, the Legislature provided that school districts should be composed of property situated wholly within one parish, and later modified its views by the adoption of Act 152 of 1920, which permitted and authorized inter-parish school districts.³⁰

²⁹Opinions of the Attorney General of Louisiana, May 1, 1922, to May 1, 1924, p. 894.

³⁰Ibid., p. 895.

An inter-parish district may vote a school maintenance tax but the part lying in one parish may not take this action alone.³¹

Size of district. A school district may include the entire parish, as is shown in the McCune case,³² in which mandamus proceedings were instituted to cancel a tax levy for liquidating bonds on the ground that the school board had no authority to include the entire parish in a school district. The court reasoned:

There is no merit in the contention that the school board was without legal authority to create one school district embracing the whole parish. Act 152 of 1920, in express terms, confers this right. There is no constitutional inhibition of this power. The Constitution does not create, nor does it designate, the method of establishing school districts. The matter is left entirely to the Legislature.³³

It was concluded that the board was "well within its legal and constitutional powers in creating the whole parish into one school district."³⁴

Also the board, by authority of Act No. 81 of 1918, is permitted when it creates a parish-wide district to declare all previously existing districts as subdistricts.³⁵

³¹Ibid., p. 419.

³²State ex rel. McCune v. Board of School Directors of Parish of Jefferson et al., (1922) 152 La. 1008, 95 So. 104.

³³Ibid., 152 La. 1009-1010.

³⁴Ibid., p. 1010.

³⁵Opinions of the Attorney General of Louisiana, May 1, 1922, to May 1, 1924, p. 886.

In another case³⁶ the size of the district was one of the controlling issues. The school district involved had been created out of the territory of the entire parish by the school board in 1919, under the provisions of Act No. 81 of 1918. That act was repealed by Act No. 152 of 1920, but in the latter act it was provided that the existence of districts created under the laws in force at the time of the repeal of the act of 1918 was not affected. Further, the court maintained: "In fact, it may be said that the Act of 1920 provides for the creation of parish-wide school districts in the same manner and for the same purpose as did the Act of 1918. Sections 1, 2, and 4 of Act 152 of 1920."³⁷ In answer to the plaintiffs' contention that the existence of a parish-wide school district created for taxing purposes is inconsistent with section 10 of article 10 of the Constitution of 1921 the court explained:

We, however, see no inconsistency between section 10 of article 10 of the Constitution and the existence of a parish wide school district. The section expressly mentions school districts and sub-school districts as being among the political subdivisions authorized to levy taxes under the section, and while it does not mention parish wide school districts, yet it does not indicate how large or small the districts must be, but impliedly leaves the size of them to the legislative branch of the government.³⁸

³⁶Louisiana & A. Ry. Co. et al. v. School Board of Webster Parish et al., (1925) 157 La. 1046, 103 So. 318.

³⁷Ibid., 157 La. 1057.

³⁸Ibid., pp. 1057-1058.

Again, in 1928,³⁹ the court upheld its policy of decreeing that since the constitution did not make any attempt at defining the territorial limits of a school district, the provisions therefor were left to the legislature. The provisions governing the case at bar were contained in Act No. 152 of 1920. That act gave the parish board power to create districts at any time and to use limits set at its discretion with a prohibition against overlapping districts. The district in question had been properly created by resolution, the lines had been surveyed, and there was no overlapping on another created district. The court held the creation legal and again maintained that to the legislature was left the duty of making specifications concerning the territorial limits of a school district.

Regulations concerning boundaries. In the creation of districts the location of the boundary lines is a factor with which the board has wide discretion, but in its designation of them there must be no uncertainty, as is shown in the following decisions.

When the Haynesville School District, No. 11, Claiborne Parish, was created, the description of its north boundary designated the termini and a section line on which it was to run. Attack was made that the section line referred to was impossible with the termini specified--that quarter-section line was meant. The court held that the quarter-

³⁹Gauthier et al. v. Parish School Board of Parish of Avoyelles, (1928) 165 La. 256, 115 So. 479.

section line meaning was so evident that the reference to section line could impart no ambiguity to the other description given--that the phrase "on the section line" had the meaning of "parallel with the section line."⁴⁰

The creation of district No. 50 in the parish of Avoyelles was objected to on the ground that one of the boundary lines was "indefinite, tortuous, and unfair."⁴¹ Evidence showed only that the boundary was tortuous; witnesses had no difficulty in locating it, thereby establishing it as not indefinite. With regard to its being unfair, the court said:

The crooked boundary complained of is not shown to be unfair to the educable children of district No. 50; on the contrary, it is shown that the majority of property owners in that district were desirous of establishing a high school for the children of the district, which high school is shown to have great advantages over the ordinary graded school; and the board, to accommodate the children of the parish residing in district No. 50, in providing a high school for them, ran the boundary line complained of in such way as to embrace within the district the property of those who were desirous of taxing themselves for the improved school conditions. The citizens of the state have a right to tax themselves for such purpose, and it is the duty of the school board to establish and create school districts and schoolhouses which will best accommodate the children of the parish.⁴²

In the district involved in the Deblieux case⁴³ the

⁴⁰Burnham et al. v. Police Jury of Claiborne Parish, (1902) 107 La. 513, 32 So. 87.

⁴¹Drouin et al. v. Board of Directors of Public Schools of Parish of Avoyelles, (1915) 136 La. 393, 67 So. 191.

⁴²Ibid., 136 La. 399.

⁴³Deblieux et al. v. Board of School Directors of Natchitoches Parish, (1917) 142 La. 147, 76 So. 590.

boundary was found to be very uncertain. In this district an election for a special tax had been defeated. Thereupon, the school board attempted by resolution to define the district so as to eliminate certain parts of the existing district. A surveyor found it impossible to describe upon the official parish map the boundary lines specified in the resolution purporting to establish the new district. The court held that the district was not created according to law, and explained the basis of its decision to annul the resolution thus:

Where, as in this case, the resolution for the creation of the district is so vague and uncertain in its calls that no surveyor can locate one of its boundaries, the defect is fundamental, as it affects the location and extent of the taxing district.⁴⁴

Permissible minor procedures. Among the charges brought against the establishment of school districts there have been various complaints which the court has considered minor but on some of which it has rendered decisions.

A census and an enumeration assessment of an anticipated district prior to the election for its creation are not necessary if there has been compliance⁴⁵ with the act which provides:

The registrar of voters shall furnish to the election commissioners appointed to hold such elections a list of the taxpayers entitled to vote, together with the valuation of each taxpayer's property, as shown by the assessment roll last made and filed prior to such election, . . .⁴⁶

⁴⁴Ibid., 142 La. 150.

⁴⁵Gauthier et al. v. Parish School Board of Parish of Avoyelles, (1928) 165 La. 256, 115 So. 479.

⁴⁶Acts of Louisiana, Extra Session, 1921, No. 46, sec. 14.

In answer to an attack against the creation of a district on the ground that the resolution was not entitled, the court said:

The contention that the resolution creating the Hesser school district No. 6 should have a title indicating its object, like a legislative act, is not well founded. The constitutional requirement that every law shall have but one object, and shall have a title indicative of such object applies only to the Legislature, and not to police juries, town councils, or school boards. *Walters v. Duke, Tax Collector*, 31 La. Ann. 668; *Callaghan v. Town of Alexandria*, 52 La. Ann. 1013, 27 So. 540; *Town of Mansfield v. Herndon*, 134 La. 10, 63 So. 606.⁴⁷

Since the statute⁴⁸ which names January 1 as one of the legal holidays does not include the transactions of a school board among the list of things unlawful to be done on that day, an ordinance creating a school district is not considered void merely because it was passed on January 1.⁴⁹

The claim that roads for certain times of the year are impassable to the extent that children cannot travel them to school will not interfere with the power of the school board to create and alter school districts, where evidence shows that the time lost to pupils thereby is not sufficient to render the board's action gross indiscretion.⁵⁰ In the session under discussion only 8 days out of 172 were lost from this cause.

⁴⁷*Gauthier et al. v. Parish School Board of Parish of Avoyelles*, (1928) 165 La. 264.

⁴⁸*Acts of Louisiana*, 1928, No. 49, sec. 1.

⁴⁹*Woodard et al. v. Bienville Parish School Board*, (1930) 169 La. 831, 126 So. 207.

⁵⁰*Sylvestre et al. v. St. Landry Parish School Board*, (1927) 164 La. 204, 113 So. 818.

The Governing Authority

Parish school board as governing body. It has been shown that the court has consistently recognized the power of the parish school board to create districts and that it has been hesitant to annul the board's action unless there was gross abuse of discretion. The extent of the authority which a board has over the district it creates was one of the interpretations sought in a suit⁵¹ in 1925, in which the plaintiffs questioned the right of the school board to call an election for voting a special tax levy. In reply the court upheld the theory expressed in section 3 of Act No. 152 of 1920, as follows: "The school board of a parish is the governing authority of school districts created by it, and has authority to call elections for the submission of propositions to the taxpayers to authorize their respective districts to levy taxes under Section 10 of Article 10 of the Constitution."⁵²

In 1928 the court outlined the purpose of the whole act pertaining to the creation of school districts to be "to provide for the creation of school districts, and for the governing authorities of such districts and to define their powers, as a necessary incident to the levy of special taxes for school purposes."⁵³ Section 3 of the act⁵⁴ was interpreted

⁵¹Louisiana & A. Ry. Co. et al. v. School Board of Webster Parish et al., (1925) 157 La. 1046, 103 So. 318.

⁵²Ibid., 157 La. 1056.

⁵³Gauthier et al. v. Parish School Board of Parish of Avoyelles, (1928) 165 La. 262-263.

⁵⁴Acts of Louisiana, 1920, No. 152.

Abolishment and Modification

Abolishment of district and change of boundaries.

Since parish school boards have the right to create school districts, it may reasonably be expected that they are empowered with the right to abolish or modify the districts of their creation. In 1912 it was held that these bodies have the right to district and redistrict the lands in the parish at their discretion, provided there is no abuse of this right.⁵⁸ However, the revision of a district cannot result in the expenditure of funds other than in that district,⁵⁹ and it has been maintained that a district may be abolished or changed only after a voted levy or maintenance tax has expired.⁶⁰ In 1927 the question of the changing of boundaries was brought to the courts for interpretation.⁶¹ The school board involved, after failure of a tax election in a newly created district, had proceeded to abolish said district and create another with slightly changed boundaries. This action of the board was attacked partly on the ground that the ordinance creating the new district was invalid because it attempted to contract the limits of the district created by the first ordinance and be-

⁵⁸Opinions of the Attorney General of Louisiana, June 1, 1912, to May 1, 1914, p. 333.

⁵⁹Ibid.: May 1, 1924, to May 1, 1926, p. 461; May 1, 1932, to April 1, 1934, p. 291.

⁶⁰Ibid.: May 1, 1922, to May 1, 1924, p. 423; May 1, 1924, to May 1, 1926, p. 474.

⁶¹Sylvestre et al. v. St. Landry Parish School Board, (1927) 164 La. 204, 113 So. 818.

cause it was merely a scheme to eliminate a part of the taxpayers who were opposed to the bond issue. In interpreting the governing statute Justice Winston Overton said:

Act 152 of 1920 authorizes parish school boards to create school districts in connection with the exercise of the power of special taxation. Since a school board has such authority, it has, by implication, the power, where circumstances permit, to abolish a district created under this authority, and since the power expressly granted is a continuing one, to create, if it sees proper, another district of smaller area, which does not include some of the territory of the one abolished, or, if it deems best and circumstances permit, to amend an ordinance creating a district, so as to contract or enlarge its boundaries, avoiding, however, the creation of overlapping districts.⁶²

Previous decisions⁶³ on a similar principle but different statutes were cited as bases of this interpretation. The court held that since the first district had contracted no indebtedness and had refused to sanction the bond issue submitted to it, there was no reason for continuing its existence. Also, it held that the procedure in abolishing the district was legal, and that since the former district was abolished, there was no reason that a new district of smaller area should not be created for the purpose of ascertaining the will of the resident taxpayers pertaining to the levying of a tax to issue bonds for building purposes.

Consolidated and overlapping districts. Several statutes pertaining to the modification of school districts by

⁶²Ibid., 164 La. 210.

⁶³Moore v. Board of Directors of Sabine Parish, (1912) 131 La. 757, 80 So. 234; Drouin et al. v. Board of Directors of Public Schools of Parish of Avoyelles, (1915) 136 La. 393, 67 So. 191.

consolidation have been enacted and their provisions seem to have been quite variant. When litigations involving this phase of school districts have been brought to the state's legal counsel and the courts, it has been the policy to uphold the provisions of the governing statutes.

In answer to an inquiry concerning the legality of the creation of coextensive districts, or a district which includes a part of a district already created, it was explained that such creation was permissible if the ten-mill limit of taxation as provided in article 281 of the Constitution of 1913 was observed; the governing legislation was traced as follows:

The creation of School Districts was authorized by Section 16 of Act 214 of 1902, and that same authority is repeated in Section 13 of Act 214 of 1912. It is only made more specific in Act 17 of 1912. The provisions in Act 17 of 1912 that these Districts may issue bonds, etc., is merely a repetition of the existing law, in Article 281 of the Constitution of 1913 and Act 256 of 1910 and amendments. In short, the School Board may create School Districts and may order elections therein, but it all must be done under limitation of Article 281.⁶⁴

While Act No. 17 of 1914, which did not seem to authorize the division of a school district into subdistricts, was in force, it was suggested to one board that instead of its creating a parish-wide district the police jury might levy a parish-wide maintenance tax and thereby prevent what might prove a hindrance to the creation for taxing purposes

⁶⁴Opinions of the Attorney General of Louisiana, May 1, 1916, to May 1, 1918, p. 420.

of districts smaller than the parish.⁶⁵

Pertaining to Act No. 81 of 1918 the court said that thereunder "it was permissible for parish school boards at any time to create a school district composed of a part or parts of one or more existing school districts, and to establish even subdistricts, i. e., a district within a district."⁶⁶

When the next legislative act, No. 152 of 1920, came into force, the overlapping districts created under the act of 1918 and prior to the passage of the 1920 act remained unaffected and their existence was recognized. Ordinances attempting to create overlapping districts under the provisions of the act of 1920 were declared null and void, since such creation was prohibited by section 2 of that statute.⁶⁷ Some exceptions were provided in this enactment prohibitory of overlapping districts; one which was upheld was the creation of a district out of a portion of a parish although there was in existence a parish-wide district.⁶⁸

By 1922 there seems to have been another change in the policy concerning overlapping districts, for the legislature of that year "specially authorized and empowered school boards upon their own initiative to merge or consolidate two or more school districts into one, . . ."⁶⁹ Since the act

⁶⁵Ibid., May 1, 1918, to May 1, 1920, p. 415.

⁶⁶Hinton et al. v. Winn Parish School Board, (1924) 155 La. 678.

⁶⁷Ibid., 155 La. 666, 99 So. 523.

⁶⁸Opinions of the Attorney General of Louisiana, May 1, 1924, to May 1, 1926, p. 484.

⁶⁹Woodard et al. v. Bienville Parish School Board, (1930) 169 La. 836.

repealed all laws in conflict therewith⁷⁰ and since the district in question was created after the passage of the 1922 act, attacks to the effect that the enlargement of the district would take in a formerly created district were held as of no consequence.⁷¹

Responsibility of debt of districts consolidated.

The consolidation of school districts has often presented the question of the disposition of tax levies existent in the smaller districts. Opinions handed down have been to the effect that such levies must continue during the full time for which they were voted.⁷² Another opinion endorsed one board's solution of the problem through the conduct simultaneously of an election to vote a school tax for the entire parish--the new district in question--and to determine the will of the people on the retention or the abrogation of the original district tax.⁷³

In some instances where the consolidation of a school district has been legalized it has become necessary to determine whether the property in the new district may be assessed to refund outstanding bonds of one of the original districts. In the Consolidated District No. 2 of Catahoula Parish, which

⁷⁰ Acts of Louisiana, 1922, No. 33.

⁷¹ Woodard et al. v. Bienville Parish School Board, (1930) 169 La. 831, 126 So. 207.

⁷² Opinions of the Attorney General of Louisiana: May 1, 1910, to May 1, 1912, p. 411; May 1, 1918, to May 1, 1920, p. 411.

⁷³ Ibid., May 1, 1916, to May 1, 1918, p. 445.

was created in 1930 by the consolidation of three districts, Nos. 2, 3, and 4, the taxpayers voted to issue refunding bonds in the sum of \$52,000 to be identified with the outstanding bonds of the original school district No. 2 and to be paid for by a levy on all the property in the consolidated district. This action was attacked and the lower court rendered judgment in favor of the plaintiff. The supreme court affirmed the decision and quoted the interpretation of the district court as follows:

"There can be no doubt of the right of a political subdivision to refund its outstanding indebtedness, including bonds supported by special taxes, by following the provisions of Act 218 of 1924. The Constitution and the Act of 1924 use the possessive pronoun 'its' in referring to the indebtedness of bonds to be refunded. A bonded indebtedness of a particular district does not automatically become the indebtedness of a larger district, in which it is included, from the act of merger or consolidation. Therefore, in granting the right to refund its outstanding or bonded indebtedness under certain conditions, the lawmaker must have had reference to the subdivision or district originally incurring the debt and issuing the bonds. To construe this law otherwise, we necessarily would have to say that when a consolidated district is formed of two or more districts, one or more of which has outstanding bonded indebtedness, that such indebtedness automatically becomes its (the consolidated district's) indebtedness and therefore may be refunded. We do not think this the correct construction to place on the laws on the subject as they presently exist."⁷⁴

Further, the lower court showed the danger of approving such policy to be:

"If the law be construed as contended for by defendant, we can conceive of cases where great injustice and financial wrong could be inflicted upon some taxpayers. For instance, a

⁷⁴Bruce et al. v. Catahoula Parish School Board, (1932) 174 La. 454-455.

small but thickly populated district with a bonded indebtedness outstanding could be merged with large tracts of valuable, unimproved lands, inhabited by few people, and at an election for the purpose the bonded debt could be fastened for payment upon the entire new district, almost entirely by the vote of the populous district. Such a procedure would be tantamount to enlarging the original district and securing indirectly what cannot be accomplished legally directly, viz.: a reduction in the millage rate necessary to pay the bonded indebtedness by adding more taxable property to the original district."⁷⁵

Thus, it was held that the indebtedness created by a particular district remains the indebtedness of that district as a distinct entity regardless of the fact that the district be later merged with others; the new district, even though it be willing, as expressed by the voice of an election, is not permitted to assume the indebtedness of one of the original districts. To follow a contrary policy could be the means of permitting a great injustice to citizens under certain conditions.

SCHOOL PROPERTY

Some of the responsibilities which the quasi-corporate districts of the state assume, through their authorized agents, are the purchasing of property, the building program, and general supervision of the property within their respective jurisdictions.⁷⁶

⁷⁵Ibid., p. 455.

⁷⁶Harvey C. Voorhees, op. cit., p. 59.

School Building Construction

The construction of school buildings through some legitimate channel is as old as the institution of public education itself, but the construction financed by the levying of taxes on the property of a school district, preparatory to issuing bonds for the purpose of erecting buildings, is of recent development.

Since the funds derived from the latter source are funds specially designated, it becomes a responsibility of the school board, as the governing authority of the district, to supervise the use of those funds in such way that they will not be diverted from their original purpose, but that their expenditure will result in the buildings expected by those furnishing the funds.⁷⁷ Some of the main features involved in securing these objectives are the correctness and the proper execution of a contract, the responsibility of the committee immediately in charge, liquidation of obligations, and the protection from, or correction, of, the diversion of funds.

The contract. In the construction of school buildings the contract is of specific value. Some assurance from both the school board and the contractor is necessary in order that all agreements may be subject to enforcement. The content of the contract is left to the discretion of the contracting parties, but fulfillment of whatever provisions may be incorporated therein has usually been held mandatory, when judicial interpretation has been found necessary.

⁷⁷Opinions of the Attorney General of Louisiana, May 1, 1906, to May 1, 1908, p. 223.

1. Necessity for material to meet specifications.

The material used in the construction of school buildings must comply essentially with the standards provided by the contract. Failure of contractor to furnish material of the required standard entitles the school board to refuse to honor the warrant therefor or to recover after the warrant has been issued under fraudulent statement of facts.⁷⁸

2. Strict interpretations upheld. It has been the policy of the courts to place strict interpretations upon building contracts, when contested questions arise. This principle is illustrated in a case⁷⁹ in which a contracting company had agreed to erect a high school building by February 7, 1925, "no allowance to be made for bad weather," but failed to comply therewith. A clause in the contract provided that: if the building was finished prior to the date, February 7, set for delivery, the contractor would receive a bonus at the rate of \$150 per day, but for every day after February 7 until actual date of delivery he would be penalized at the same rate.

Although an extension of sixty days was granted by the board, which made the permissible date of completion April 8, the building was not substantially completed until June 11, at which date it was accepted by the board. When the work was completed in all respects, the board, in answer to the contracting

⁷⁸Parish Board of School Directors v. Alexander, (1910) 125 La. 808, 51 So. 906.

⁷⁹Stewart-McGhee Const. Co. v. Caddo Parish School Board, (1928) 165 La. 200, 115 So. 458.

company's demand for the balance due, authorized payment of that balance less the penalties for the time from February 7 to June 12. Thereupon, the construction company sued the board for the full amount of the balance, the cost of heating the building during construction, and the expenses incurred in relaying rubber tile flooring made necessary by the climatic conditions at that time.

As in a previous case,⁸⁰ the losses alleged because of climatic conditions were held to be the contractor's risk. If heat was necessary and was not provided by contract, it was incumbent upon the contractor to supply that in the same way as it was his responsibility to supply the tools necessary for the carrying out of his contract. Evidence did not establish that it was the custom of the owner to furnish heat during the construction of the building.

Since it was conclusively shown that the defendants did not contribute to the delay in the completion of the building, the plaintiff was required to accept the deduction of \$150 per day, as agreed upon, from the termination of the extension of time until the building was officially accepted. No heed was given to the plaintiff's contention that penalty should not hold when the school board had suffered no damages from the delay.

3. Importance of the time element. Another aspect of adjudications concerning building contracts is the time

⁸⁰Picard Const. Co. v. Board of Com'rs of Caddo Levee Dist., (1926) 161 La. 1002, 109 So. 816.

element for the deliverance of all material. In one building program the contractor relied on terra cotta prices received by telegraph and made his bid accordingly, only to be notified soon thereafter that there had been an error to the amount of \$3000 in the transmission by the telegraph company and that for that cause the company was refusing to carry out the contract. Thereupon, a new agreement was entered into between the terra cotta company and the contractor, whereby the contractor agreed to a price \$1000 more than the original price on the conditions that all the material be delivered by the date specified in the telegram and that the company fail in collecting the \$3000, amount of error, from the telegraph company.

It was shown that the maximum liability of the telegraph company for error in transmission by its employees is \$500; therefore the condition in the contract of the materialman with the supply company became one of time only. Time had become a condition of remuneration and a very important phase of the contract.

The material was not delivered completely by the time specified in the contract; thereupon, the court sustained the contractor's refusal to pay the additional sum of \$1000, for which the terra cotta company had brought suit against the contractor, the school board, and the surety.⁸¹

⁸¹Winkle Terra Cotta Co. v. Butler et al. (1928) 166 La. 241, 117 So. 134.

4. Relation between contractor and surety. Judgments rendered against a building contractor and his surety are judgments in solido. Under such conditions, when there has been judgment in favor of lienholders, "the surety is entitled to the same judgment against the contractor, who was called in warranty, as was rendered against it."⁸² The supreme court has corrected judgments to that extent when such omissions have been made by the lower court.⁸³

In case of judgment rendered against a subcontractor and his surety, an appeal made by the surety alone must be confined to certain limitations: the judgment against the subcontractor is not subject to review when that individual did not appeal, the surety is limited to defenses made by the principal, and the burden of proof that the subcontractor has discharged the obligations is with the surety and not the materialman in whose favor judgment was rendered.⁸⁴ The subcontractor as debtor has the right of imputation of payments as he pleases in the absence of fraud and his surety cannot control him therein, although there may be controlling stipulations in the contract between the general contractor and him and in his bond, signed by the surety. In a case in which a subcontractor was debtor to a materialman for material used in two school buildings at different places, and evidence was

⁸² Ibid., 166 La. 243-244.

⁸³ Ibid., 166 La. 241, 117 So. 134.

⁸⁴ N. O. Nelson Mfg. Co. v. Wilkerson et al., (1934) (La. Crt. of App.) 152 So. 157.

not sufficient to show that the payments were imputed to the debt in question rather than to the other debt, judgment was held against the subcontractor and his surety, and the surety was not entitled to use as defense that payment had been made.⁸⁵

5. Disposition of fraudulent procedures. That the courts have protected the rights of the taxpayers against fraudulent procedures connected with contracts for the construction of school buildings is evidenced by the Coreil case of 1926,⁸⁶ in which the purchaser of the school district bonds had exacted of the school board the following condition:

"Award of contract for construction involving this issue, and issue which it supplements, to be a contractor mutually satisfactory to the School Board and ourselves."⁸⁷

The execution of this condition was the bonding company's demand of the bidding contractors that to the amounts of their respective bids \$13,000 be added for the benefit of said company. Accordingly, the contract was let for the work to be done at a cost to the school board of \$99,444. About three months before the building was completed, plaintiffs brought suit against the school board and the contractors to enjoin payment of the \$13,000, which was alleged to be in excess of the true consideration and to be a fraud perpetrated upon the taxpayers of the district. Before the date of the case the final payment involving the \$13,000 had been made, but evidence

⁸⁵ Ibid.

⁸⁶ Coreil et al. v. Evangeline Parish School Board et al., (1926) 160 La. 1011, 107 So. 783.

⁸⁷ Ibid., 160 La. 1013.

showed that it was not authorized by the school board and was not known to the president of the board until after it had been made. Thereupon, the court held the final payment unauthorized.

The court found that the testimony established the alleged fraud; consequently, it decreed the true consideration of the contract to be \$86,444, and annulled the contract to the extent of \$13,000. Judgment for this amount was granted against the school board and the contractors. The school board prayed for amendment to the effect of its release, but the court held that the pleadings did not warrant such an amendment. However, it explained to the board that this judgment did not preclude it from asserting in a proper proceeding any action against the codefendant.

Thus was demonstrated the court's policy of protecting the taxpayers in the expenditure of their money for school buildings, even though the school board had seemed to abuse its discretion by accepting a contract which had been made immorally and fraudulently.

While the courts have held consistently to the policy of strict interpretation of the law in protecting the taxpayers from fraudulent building contracts, they have been equally consistent in demanding that accusations of fraud in the expenditure of the building fund be definitely established. To certain petitioning taxpayers⁸⁸ explanation was made as follows:

⁸⁸Guillory et al. v. Fontenot, Parish Superintendent of Public Education, et al., (1926) 161 La. 67, 108 So. 127.

While it is true that the jurisprudence of the state authorizes taxpayers, in proper cases, to sue for the recovery of public funds or property, in which they have an interest in common with all other citizens similarly situated, when it is alleged that the governing authority which is charged with its administration has illegally or fraudulently disposed of it, such a suit is not based upon any contractual relation, and, in the absence of a showing in the petition that the governing authority, which, in this case, is the school board, was a party to the alleged fraud and refuses to act in the premises, the taxpayers' suit is, at least, premature.⁸⁹

Responsibility of the building committee. The parish board is the governing authority of schools within its jurisdiction, but often it becomes necessary for the supervision of building projects to be delegated to local committees. Controversies as to the responsibility of such local boards may be expected. In one instance⁹⁰ a local committee which was appointed to contract for the building of a schoolhouse accepted a purchase of bricks, the warrant for the payment of which was honored by the school board. Subsequently, the board was advised officially that the bricks were of inferior quality; thereupon, it repudiated the action of the committee and brought suit against the chairman of the committee for recovery of the price paid for the bricks with interest from judicial demand and for the expenses of inspecting, separating, and moving the bricks.

Evidence showed that the chairman of the committee held the decisive vote and cast it in favor of the purchase,

⁸⁹Ibid., 161 La. 69.

⁹⁰Parish Board of School Directors v. Alexander, (1910) 125 La. 808, 51 So. 906.

although he knew of the provisions of the contract to guard against the acceptance of inferior bricks. He induced some members of the committee to sign the warrant by representing to them that he was the rightful owner of the bricks, since he was creditor for more than the price of purchase to the one who made the bricks, and that he would be responsible for any difference in the quality.

The court held that the defendant, chairman of the committee, having knowingly accepted bricks of such inferior quality as to be valueless, was responsible to the board for the price of the purchase with interest. By way of explanation, it established the responsibility of a local building committee to its governing board as follows:

The building committee, of which the defendant was chairman, was the agent of the plaintiff board, and as such was responsible to their principal for damages resulting from the nonperformance of their duty, or from unfaithfulness in their management, or from their fault or neglect. Civ. Code, arts. 3002, 3003. The bricks being unsuitable for the purposes intended, the committee was in fault for warranting on the plaintiff board for the contract price, and the defendant, having unduly received the proceeds of the warrant as a creditor of the contractor, is bound in law and equity to make restitution to his principal.⁹¹

Liquidation of cost of construction. Whenever there is the construction of a school building, there is likewise the responsibility of some agency to pay the expenses rightfully incurred. From early to recent times various litigations have become necessary concerning the methods of last resort

⁹¹Ibid., 125 La. 812.

to liquidate school building construction indebtedness.

1. Levy authorized by special statute. The power of the state to construct and maintain school buildings through its authorized agents is so obvious that its legal existence is accepted without question. One of the early suits⁹² dealing with this subject sought to compel the sheriff of Avoyelles Parish in 1856 to assess and collect a special tax in a certain district for the payment of a building obligation. The relator who built the schoolhouse in question had obtained judgment against the school directors about six years previous but had been unsuccessful in his efforts to collect; the legislature came to his rescue by the statutory provision:

Be it enacted, &c. That it shall be the duty of the Sheriff of Avoyelles, to assess and levy a tax in addition to the State tax, equally on all taxable property within the Second School District of said parish of Avoyelles, sufficient to pay the judgment in the case of W. H. Bassett v. School Directors of the Second District, in the Thirteenth Judicial District Court of the parish of Avoyelles, together with the costs of collection, and to collect the same and pay to the plaintiff or to his assigns, the amount of said judgment and costs; and the fees of collection to be the same as the fees for the collecting the State tax, and thereafter, if any balance remains, to pay the same over to the School Directors of said Second School District.⁹³

The sheriff attacked the constitutionality of the act on the ground that the legislature's organic right to provide for the support of public schools by general taxation

⁹²W. H. Bassett v. L. Barbin, Sheriff, (1856) 11 La. Ann. 672.

⁹³Acts of Louisiana, 1855, No. 229.

excluded its right to authorize special taxation, as in this instance. However, the court held that the act was constitutional and that the sheriff must levy the prescribed tax. Thereby the court upheld the legislative action which had considered the liquidation of a building debt of sufficient importance to warrant special statutory provision therefor.

2. Certificates of indebtedness. What may be accepted as consideration in liquidating the cost connected with a building program is often a question necessary to be settled. In 1924 the school board of Jackson Parish, under authority of law,⁹⁴ called an election for voting a special tax of two mills for two years to be used in reroofing and repairing a school building. The election was promulgated favorably and a contract was made with a merchant to furnish a certain amount of roofing. The merchant refused to deliver because the board had nothing but a certificate of indebtedness to offer in payment until the taxes could be collected. Ultimately the board purchased the needed material from another party. The first seller then entered suit⁹⁵ to collect from the said school board for the roofing which he contracted to sell, but which he had refused to deliver on the payment basis offered by the board, although it was understood by all parties that the certificates of indebtedness would be used to pay the debt. The school board recognized that the required amount could not be taken from the general fund, and it was unsuccessful in its

⁹⁴Ibid., 1916, No. 120, sec. 9.

⁹⁵H. C. Walsworth v. Jackson Parish School Board, (1924)
1 La. App. 37.

efforts to get the certificates cashed. The court admitted that in theory the school board violated a contract but stated that since both parties knew that the money was to come from a special tax which had not been collected--and particularly when the fund was to be created in accordance with a specific law--the case was taken out of the general rule. Also, the court pointed to the fact that most of the material in question was standard and could be sold easily by the plaintiff without loss.

Thereby it was held that certificates of indebtedness, properly issued, are suitable for fulfilling the payment part of a contract; upon that basis the plaintiff's demand to designate the defendant's failure to pay cash as the breaking of contract was rejected.

3. Sale of building for indebtedness. A school building is not exempt from seizure and sale for defaulted payment on the material used in its construction, when judgment therefor has been properly secured. This policy was followed in a litigation⁹⁶ concerning a school building debt, for liquidation of which, a judgment had been obtained by a manufacturing company. The district court granted the company a lien and privilege to seize and sell the building at any time for the satisfaction of the judgment. When four years later the company was about to seize and sell the building, the board made an unsuccessful attempt in district court to

⁹⁶Hawthorne et al. v. Jackson Parish School Board et al., (1926) 5 La. App. 508.

step the procedure. Shortly thereafter some taxpayers attempted to attack the part of the judgment granting the privilege on the building on the alleged ground that the judgment was contrary to law.⁹⁷ The court failed to maintain the mere ground of error as a cause for annulling a judgment, and held that since the judgment had become final a long time previous, whether right or wrong, it was binding, and that the citizens had then "no cause or right of action to annul a judgment obtained against the board as governing authority of the district, the board being properly cited and represented."⁹⁸

Thus it was legally established that by proper procedure a building may be sold to liquidate a debt thereon created by the governing board, when that board does not fulfill the obligation of payment.

Use of School Property

Diversion from created purpose prohibited. A public school building erected at the expenses of the taxpayers may not be converted into a business enterprise as long as it is needed for school use. One building in controversy⁹⁹ had been built with a \$20,000 levy and \$50,000 contribution from the city of Monroe; taxpayers charged that a part of it was being used as a public theater by city authorities under a pretended lease. The taxpayers' right to come into appeal court on this

⁹⁷Ibid.

⁹⁸Ibid., p. 512.

⁹⁹Sugar et al. v. City of Monroe et al., (1902) 108 La. 677, 32 So. 961.

question was upheld according to previous decisions,¹⁰⁰ as follows:

. . . upon . . . the question whether the municipal authorities are diverting or making an illegal use of the building in question, which is public property, any taxpayer has the right to come into court, and, quoad the amount, the jurisdiction is determined by the value of the property or of the interest therein represented by the money specially voted for a school building; the case not being materially different from what it would have been if the mayor and council had originally proposed to devote the \$20,000 raised for that purpose to the construction of a theater, and had been enjoined from so doing.¹⁰¹

Much and varied testimony was presented concerning the effect that the operation of a theater in a part of the building would have upon the attainment of the educational purpose for which the building was established. The court did not attempt to rule on this phase of the question but said:

Considering the case in the light of this testimony, the least that we can say is that, whereas we know that the qualified voters of the city of Monroe voted to tax themselves for the purpose of erecting a schoolhouse, we have no assurance that they would have so voted if they had been informed that the building to be erected would be used as a theater as well, and that we should not consider that they were fairly treated if the property for which they are still paying, year by year, should be permitted to be used for a purpose not intended by them, and of which, in all probability, some, if not a majority, of them would disapprove.¹⁰²

¹⁰⁰Thomas H. Handy et al. v. The City of New Orleans et als., (1887) 39 La. Ann. 107, 1 So. 593; Edward Cenery, Jr., et al., v. The New Orleans Waterworks Company et als., (1887) 39 La. Ann. 770, 2 So. 555; State ex rel. Orr v. City of New Orleans et al. (Protestant Orphans' Home et al., Interveners), (1898) 50 La. Ann. 880, 24 So. 666; City-Item Co-operative Printing Co. v. City of New Orleans et al., (1899) 51 La. Ann. 713, 25 So. 313.

¹⁰¹Sugar et al. v. City of Monroe et al., (1902) 108 La. 681.

¹⁰²Ibid., p. 684.

In giving its complete policy upon the right to use a part of a school building as a theater the court explained:

In expressing this conclusion, we do not wish to be understood as going to the extreme of holding that the city authorities may not make such casual and incidental use of the building in question, not inconsistent with or prejudicial to the main purpose for which it was erected, as they may deem advisable, nor as holding that changed conditions in the future may not justify them in devoting it to some other purpose. The question here presented is whether they have the legal right at this time to make use of it, or any part of it, for the purpose of maintaining a theater therein, or of giving theatrical performances, as a business; and this question we decide in the negative.¹⁰³

Likewise, the school board is without authority to use or utilize any school property for purposes other than those of public education. This applies to the construction of a swimming pool on the school grounds for the benefit of the children of the municipality or to the leasing of a portion of the grounds to individual citizens for the purpose of constructing a public swimming pool.¹⁰⁴

Illegality of leases to business enterprises. A similar principle as in the previous case was involved in the Presley suit,¹⁰⁵ with the lease for a different purpose. In the instant case the parish school board had leased a portion of certain school grounds for the proposed purpose of the establishment of a cafeteria for the teachers and pupils. Relative to the board's lack of power for this action the court of appeal quoted from Ruling Case Law:

¹⁰³ Ibid.

¹⁰⁴ Opinions of the Attorney General of Louisiana, May 1, 1930, to April 30, 1932, p. 477.

¹⁰⁵ Presley v. Vernon Parish School Board, (1932) 19 La. App. 217, 139 So. 692.

. . . vol. 24, subject Schools, P. 585, Sec. 34:
 "Unimproved school lands are subject to the same restrictions as schoolhouses, and the school board cannot permit them to be used for collateral purposes, even though profitable. This is on the ground that school boards have power only over educational matters, and so have no power to lease or grant school property for other purposes."¹⁰⁶

Thereupon it was maintained that a school board may not divest itself of its authority over school property. The dangers of endorsing a policy to the contrary were pointed out as follows:

It looks reasonable that while a cafeteria on the ground might be a convenience to the pupils and teachers, the business conducted . . . may become a nuisance, which, for the welfare of the pupils and teachers, should be suppressed. And such power must be preserved.¹⁰⁷

The discretion which the board may exercise in the use of the property was described thus:

A school board does not have power, under the law, to lease ground acquired for school purposes, on which a school building has been erected, and a public school is being therein conducted, unless as stated in 108 La. 677, 32 So. 961, 59 L. R. A. 723, it is for some casual use, not prejudicial to nor inconsistent with the main purpose for which the property was acquired. And such an exceptional situation does not exist in the present case.¹⁰⁸

Sale of luncheons under certain conditions permissible. The sale of refreshments during hours of intermission for the convenience of teachers and pupils is not considered

¹⁰⁶ Ibid., 139 So. 694.

¹⁰⁷ Ibid., p. 695.

¹⁰⁸ Ibid. The case referred to as 108 La. 677, 32 So. 961, 59 L. R. A. 723, is Sugar et al. v. City of Monroe et al., (1902), supra.

an unlawful use of the school buildings. In a contest¹⁰⁹ of this use of school property the plaintiff alleged that the school board of New Orleans had entered into a contract whereby certain parties were given permission to sell merchandise on the school grounds in violation of constitutional provisions to the effect that: "The funds, credit, property or things of value, of the State or of any political corporation thereof, shall not be loaned, pledged or granted to or for any person or persons, association or corporation, public or private; . . ."¹¹⁰ The decision handed down was:

. . . the mere sale of luncheons, etc., on the school premises, during lunch hours only, to teachers and pupils only, under the circumstances and for the purposes set forth in defendant's answer, is only incidental to the main purpose of said schools, and is in the interest of the safe, sanitary, and efficient conduct of said schools, and that same is not an unlawful use of said buildings under such circumstances.¹¹¹

Authority of school board to sell old site. School boards may sell school property which is no longer needed for school purposes with a view of using the proceeds thereof for the purchase of more suitable property. The law governing this principle is interpreted in the Henderson case¹¹² in which the school board of Caddo Parish was enjoined from selling to the city of Shreveport a lot which had been purchased for

¹⁰⁹Ralph v. Orleans Parish School Board, (1925) 158 La. 659, 104 So. 490.

¹¹⁰Constitution of Louisiana, 1921, art. 4, sec. 12.

¹¹¹Ralph v. Orleans Parish School Board, (1925) 158 La. 662-663.

¹¹²Henderson et al. v. City of Shreveport et al., (1926) 160 La. 360, 107 So. 139.

a school building site but never used for such purpose. The court held that since a school board has no right to acquire lands for any other than school purposes, it follows that:

. . . it cannot hold lands indefinitely for other than school purposes; and hence it is the plain duty of the school board to divest itself of any land which admittedly, according to the judgment of the board itself, is unnecessary or unsuitable for school purposes; and mandamus would certainly lie to ~~compel~~ the board to divest itself of land so held.¹¹³

Such sale was held authorized by the statutory provision: "The parish school board shall determine the number of schools to be opened, the location of the school houses, . . . they may change the location of a school house, sell or dispose of the old site, and use the proceeds thereof toward procuring a new one."¹¹⁴ It was explained that "old site" means "any site" which is no longer used, or necessary, or suitable for a school. The purchase of new property for the same purpose does not have to be made simultaneously with the sale of the old.

In summary, the court upheld the right of sale as follows:

In the case at bar we have shown, we think, that the legislative branch of the government has expressly consented to the sale by a school board of the "old sites" of schools, and that any site which is unused and unnecessary or unsuitable for school purposes is an old site, within the meaning of the statute.¹¹⁵

¹¹³Ibid., 160 La. 367.

¹¹⁴Acts of Louisiana, 1922, No. 100, sec. 20.

¹¹⁵Henderson et al. v. City of Shreveport et al., (1926) 160 La. 371.

The state's legal counsel seems to have interpreted as an implied power the authority to use the proceeds from the sale of property for the purpose of improving or equipping existent schoolhouses.¹¹⁶ However, after the enactment of the governing statute¹¹⁷ of 1922, school boards were advised to have such use of the funds endorsed by the supervisor of public accounts before taking definite action, for there is statutory specification of the use which may be made of these funds.¹¹⁸

Protection of school property. Since the early history of her educational system, Louisiana seems to have attempted to safeguard the interest of her public schools. From 1864¹¹⁹ to 1879 the legislature was empowered to exempt from taxation all property actually used for school purposes, and since 1879¹²⁰ such property has been exempt by organic provision. Whether the exemption is granted by authorized statutory enactment¹²¹ or by the constitution, exemption from all taxation, municipal as well as state, is meant.¹²² This exemption does

¹¹⁶Opinions of the Attorney General of Louisiana: May 1, 1920, to May 1, 1922, p. 522; May 1, 1922 to May 1, 1924, p. 444.

¹¹⁷Acts of Louisiana, 1922, No. 100, sec. 20.

¹¹⁸Opinions of the Attorney General of Louisiana, May 1, 1926, to April 30, 1928, p. 289.

¹¹⁹Constitutions of Louisiana: 1864, art. 124; 1868, art. 118.

¹²⁰Ibid., 1879, art. 207.

¹²¹Acts of Louisiana, 1868, No. 196, sec. 2.

¹²²Mr. & Mrs. Lefranc v. City of New Orleans, (1875) 27 La. Ann. 188.

not include property merely owned by the school and not actually in use, although that property produces no revenue or its revenue is used for school purposes; however, it does include lots used in connection with a school, such as playgrounds.¹²³ When property used for school purposes is owned by some individual or company deriving rent therefrom exemption from taxation does not hold;¹²⁴ on the other hand, if the use of a building belonging to other than school authorities is granted for school purposes without receipt of profit or income, such property is exempt on the grounds of being actually in use for school purposes.¹²⁵ This privilege pertains to ordinary taxes but does not exempt school property from local assessment or special taxation, such as on pavements and sidewalks.¹²⁶ Property which belongs to the school board and is used for school purposes is considered public property and is not subject to be sold for taxes.¹²⁷

Parish school boards are considered as engaged in the exercise of essential governmental functions; consequently, gasoline and lubricating oil purchased by them from the manu-

¹²³Opinions of the Attorney General of Louisiana, May 1, 1920, to May 1, 1922, p. 807.

¹²⁴Caroline Armand and Husband v. F. E. Dumas, State Tax Collector, (1876) 28 La. Ann. 403; Opinions of the Attorney General of Louisiana, May 1, 1928, to April 30, 1930, p. 593.

¹²⁵Constitution of Louisiana, 1921, art. 10, sec. 4; Opinions of the Attorney General of Louisiana, May 1, 1928, to April 30, 1930, p. 593.

¹²⁶Opinions of the Attorney General of Louisiana, May 1, 1930, to April 30, 1932, p. 438.

¹²⁷Ibid., May 1, 1920, to May 1, 1922, p. 830.

facturer are exempt from the tax imposed by the Federal Government.¹²⁸

The state has endeavored to protect the pupils of public schools from the presence of intoxicating drink by prohibiting the operation of a saloon near the school building.¹²⁹ In 1909 it was definitely established that a liquor dispensary could not be operated within three hundred feet of a school.¹³⁰ Similar regulation may be made forceful now by legislative enactment which names a radius for a particular school, or by municipal ordinance.¹³¹

SUMMARY

The School District

The underlying principles governing the school district as it has functioned in the state's program for the development of a system of free public schools appear to be the following:

1. The legal basis for the school district is implied in the power to establish, for the district was a recognized entity many years before it was provided for in the state's organic law.

2. The school district is a quasi-corporate subdivision of the state created for the purpose of maintaining

¹²⁸Ibid., May 1, 1932, to April 1, 1934, p. 906.

¹²⁹Ibid., May 1, 1898, to May 1, 1900, p. 137.

¹³⁰Ibid., May 1, 1908, to May 1, 1910, p. 253.

¹³¹Ibid., May 20, 1932, to April 1, 1934, p. 609.

the public schools within its jurisdiction.

3. The establishment of the school district is authorized by law but the parish school board is clothed with broad discretionary power in the creation thereof.

4. The size of the district is not a factor, for any part of a parish, the whole parish, or portions of two parishes may be included within its limits as defined by the parish board.

5. The location of boundaries of districts is subject to a wide discretion of the school board, but the designation thereof must permit of no uncertainty.

6. The parish board of school directors is the governing authority of the school district.

7. The parish school board which has the power to create school districts may in its discretion alter, abolish, or consolidate the districts of its creation, if prohibitory statutes are not violated.

8. The obligations of debt assumed by a district through bond issues or any other legal channels are not affected by the consolidation of that district with another.

School Property

The principal policies pertaining to the administration of public school property as upheld by the law are as follows:

1. The parish school board as the governing authority of the district is custodian of all public school property therein.

2. A building program may be financed through the levy of special taxes by the qualified taxpayers of the district.

3. The contract is an integral feature of the building program; strict interpretation thereof and adherence thereto are held for all parties concerned. The law serves to protect the taxpayer against fraudulent procedures in making or executing contracts.

4. Surety companies are held responsible for the faithful performance of their clients, as agreed to in the contract.

5. Parish school boards often appoint auxiliary local building committees, who are held accountable for all transactions made under their supervision.

6. Contracted obligations for a building program must be liquidated, even if the liquidation necessitates special legislation or the sale of the building for recovery of the amount of indebtedness.

7. Certificates of indebtedness which have for their security an authorized tax levy are suitable for satisfying the payment part of a contract.

8. Diversion of school property from its established purpose is contrary to the interpretation of the law.

9. The parish school board may, at its discretion, dispose of school property which is no longer needed for public school use.

10. It has been the policy of the state to safeguard the interest of public schools by exempting their property from ordinary taxation and by protecting schools from contaminating influences.

CHAPTER X

ADMINISTRATION OF PUPIL PERSONNEL AND THE CURRICULUM

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The Constitution of the United States, the organic laws of the state, common law theory, court decisions, legal opinions, and common practice are in accord on the theory that the state has the power to provide for the establishment of a system of free public schools. Since pupils and programs of study are essential elements of a school system, it is axiomatic that the state has a right to establish, through its duly authorized agents, a legal basis governing the pupil personnel and the organization and administration of the curriculum as they relate to the public school system. The purpose of this chapter is to determine the law of the state pertaining to the pupil personnel and the curriculum as revealed by the organic laws and statutory enactments relating thereto and as interpreted by the courts and legal counsel of the state.

PUBLIC SCHOOL PUPILS

"Under the English common law a father had almost unlimited control over the education of his child, and in the American colonies the same principle applied until modified

by statute."¹ The Supreme Court of the United States has held that a reasonable amount of education for all children is necessary to promote the public welfare of the states and that legal provisions enforced by a state with such objectives in view are not in violation of the principles of personal liberty, which the Fourteenth Amendment to the Federal Constitution assures to every individual.² Then, the foundation for the promotion of the general welfare of the state through education was made possible for the American youth when free public "schools were established and when the states of the Union assumed the responsibility for protecting children against the elements which tended to deprive them of this rightful heritage."³

Legal Foundations

The power to establish public schools obviously implies a basis for the administration and supervision of those who are to attend such institutions. That Louisiana assumed the right to control pupil personnel is evidenced by her establishment of a school system long before there was any organic provision on the subject. What may be termed the first implication was the mere suggestion of state direction

¹Newton Edwards, The Courts and the Public Schools (Chicago, 1933), p. 480.

²Ibid., p. 481.

³Fred Engelhardt, Public School Organization and Administration (Boston, 1931), p. 348.

in the provision that school funds be distributed to the parishes according "to the number of free white children between such ages as shall be fixed by the General Assembly."⁴

In the Convention during the War for Southern Independence there was much quibbling over whose children the constitution should provide for.⁵ It was finally agreed to include "all children of the state, between the ages of six and eighteen years,"⁶ with no mention of race or color. The Constitution of 1868 extended the upper age limit to twenty-one years and provided for admission of all pupils of such ages "without distinction of race, color or previous condition."⁷ In 1879 the age limits were put back to six and eighteen years for all children,⁸ with no mention of race or color. These limits have remained unchanged with the exception that where kindergarten schools exist, children may be admitted between the ages of four and six years.⁹ Also, since 1898 provision for separate schools for the white and colored races has been in effect.¹⁰

⁴Constitution of Louisiana, 1852, art. 136.

⁵Debates in the Convention for the Revision and Amendment of the Constitution of the State of Louisiana, 1864, pp. 501, 523, 601.

⁶Constitution of Louisiana, 1864, art. 141.

⁷Ibid., 1868, art. 135.

⁸Ibid., 1879, art. 224.

⁹Ibid., 1898, art. 248.

¹⁰Ibid.: 1898, art. 248; 1921, art. 12, sec. 1.

Separate Schools for White and Colored Races

Since the expiration of the period of the War for Southern Independence and Reconstruction the state constitutions, the courts, school authorities, and common practice have maintained the policy of separate schools for white and colored children. In 1881 the question of separation of pupils of color was presented for judicial interpretation in a suit¹¹ to compel the New Orleans School Board to admit colored children in a school of white children. The supreme court upheld the policy of separate schools for the white and colored races by rendering a decision adverse to the relator and maintaining the school board's right to refuse admission of colored children in a school of white children.

A much more recent controversy¹² shows a continuation of the policy of separate schools for children of color. The act which brought the issue to the courts was the expulsion of the plaintiff's daughter from a white school on the ground that she had negro blood. Her father was white and she and her mother appeared to be white. After she had attended the white school from the age of seven to fourteen years she was excluded by the school board. From the decision of the district court, which refused to reinstate the child as an eligible pupil for the white schools, the plaintiff appealed to the supreme court; he was met with the explanation that

¹¹State ex rel. U. Dellande v. New Orleans School Board, (1881) 33 La. Ann. 1469.

¹²Oberly v. Calcasieu Parish School Board et al., (1918) 142 La. 788, 77 So. 600.

the district court has jurisdiction of suits involving civil or political rights, under which classification the issue falls. Consequently, the appeal was dismissed and the decision of the district court was left controlling. In refusing to force reinstatement of the child the court upheld a domestic regulation, "which one state in its sovereign judgment may require to be different from the regulation of another."¹³

Permission for Transfers to Another Parish

The state has provided a public school system for its youth and it is the duty of the administrators to make this opportunity for education available to those for whom it is provided. A pupil who does not live within reach of a suitable school may be permitted to attend a school in an adjoining parish.¹⁴ Determination of the source of authority for such transfers was sought in 1925.¹⁵ In the situation involved, the school board of Jefferson Parish had adopted a resolution permitting the son of the plaintiff to attend a school in an adjoining parish but the parish superintendent had refused to issue the permit. The court pointed out that Act No. 100 of 1922 governed the case and that nowhere in the

¹³Harry R. Trusler, Essentials of School Law (Milwaukee, 1927), p. 45.

¹⁴Opinions of the Attorney General of Louisiana, June 1, 1912, to May 1, 1914, p. 337.

¹⁵State ex rel. Charles Fourroux v. Board of Directors of the Public Schools for the Parish of Jefferson and J. C. Ellis, Supt., Appellants, (1925) 3 La. App. 2.

statute was the school board given power to act in the matter. The pertinent statutory provision was to the effect that:

Children for whom adequate schools of suitable grade have not been provided in their home parish may attend schools in an adjoining parish. In such cases permits shall be secured from the parish superintendent of the children's home parish, and after they have been approved by the parish superintendent of the parish in which the schools that the children desire to attend are located they shall be presented to the principals of the schools which the children wish to attend, who shall be required to admit the children and provide for their instruction the same as if they were residents of the parish.¹⁶

The excerpt of the statute quoted shows the valid reason for the transfer of a pupil to be that there are no schools of suitable grade to meet his demands in his home parish. This reason was not assigned in the instant case; the father claimed the privilege merely because "of the advance studies and desiring to complete the education of his said child."

In upholding the sole right of the parish superintendent to issue such permits, the court maintained that "the Parish School Board and the Superintendent of the Public Schools are treated as separate and different persons and are vested with different rights and subjected to different duties and obligations separate and distinct. The functions of each are clearly defined."¹⁷ Since the law prescribes that the parish superintendent issue the permits, the court was neither empowered to substitute the board of school directors

¹⁶Acts of Louisiana, 1922, No. 100, sec. 59.

¹⁷State ex rel. Charles Fourroux v. Board of Directors of the Public Schools for the Parish of Jefferson and J. C. Ellis, Supt., Appellants, (1925) 3 La. App. 4.

in this capacity nor to control the exercise of discretion by the designated officer unless he had made abuse thereof. Consequently, the parish superintendent was not ordered to issue the permit petitioned.

The state's legal counsel has ruled¹⁸ that after such transfers are granted there must be adherence to the provision: "The Superintendent of the children's home parish shall settle monthly for the instruction of such children as shall take advantage of the provision of this section, the settlement to be on the basis of the monthly per capita cost of instruction in the children's home parish."¹⁹

Transportation of Pupils

A comparatively recent educational development, which has come particularly with the consolidation of schools, is the transportation of children who live at an inconvenient distance from the school center. Formerly those pupils not living within walking distance of a school of the necessary grade boarded in the school community, furnished their own means of travel, or resignedly remained at home. For obvious reasons most school boards have found transportation a solution to many of their problems concerned with assuring necessary educational opportunity to all pupils alike and, although its proper execution continues to present many novel problems,

¹⁸ Opinions of the Attorney General of Louisiana, May 1, 1930, to April 30, 1932, p. 467.

¹⁹ Acts of Louisiana, 1922, No. 100, sec. 59.

its adoption has become a fairly well established policy throughout the state.

Practically all types of pupil transportation are now in use. School boards may contract with common carriers²⁰ and owners of motor trucks,²¹ or they may purchase trucks as school property and employ operators therefor,²² but they are not empowered to spend money for the transportation of children except in a manner prescribed by law.²³

Many of the questions which transportation has presented are settled by the school board under whose jurisdiction they come, but in a few instances the board's adjudications have not been acceptable to all parties and the state's legal advisers and courts have been requested to interpret certain pertinent policies.

Discretionary power of school board to furnish transportation. By section 58 of Act No. 120 of 1916, as re-enacted in section 29 of Act No. 100 of 1922, parish school boards were given authority to provide for the transportation of pupils who live more than two miles from school. The extent of the board's discretion in this respect was tested in 1925 by the Wall case.²⁴ Therein the plaintiff

²⁰Opinions of the Attorney General of Louisiana, May 1, 1918, to May 1, 1920, p. 333.

²¹Ibid., May 1, 1918, to May 1, 1920, p. 724.

²²Ibid., May 1, 1926, to April 30, 1928, p. 283.

²³Ibid., May 1, 1930, to April 30, 1932, p. 640.

²⁴Lorin Wall v. Livingston Parish School Board, (1925) 1 La. App. 730.

sought collection of a balance claimed to be due according to a resolution of the board to allow him a stipulation per daily attendance of his children in lieu of transporting them to school. The per diem payments had been made until the board, by resolution, discontinued the practice and thereupon refused to meet the plaintiff's demands. The court maintained that under the governing acts the authority conferred is merely permissive and in no way compulsory.

The compulsory attendance law, Act No. 117 of 1922, contains a proviso for the exemption of those children living more than two and one-half miles from school and for whom transportation is not provided by the school board. This is further recognition of the school board's discretionary power in furnishing free transportation to pupils.²⁵

Delegation of discretionary power of transportation forbidden. The parish school board has complete jurisdiction in matters pertaining to the transportation of pupils and under no circumstances may it delegate such discretionary power to others. It is a public board constituted to function in the interest of public welfare and must finally determine every subject committed to its judgment. An example of this policy is shown in the Johnson case²⁶ in which the court of appeal was called upon to decide if the school board could delegate one of its members to contract with a school bus driver. In

²⁵Ibid.

²⁶Johnson v. Sabine Parish School Board, (1932) 19 La. App. 243, 140 So. 87.

holding to the theory that the school board could not delegate its discretionary power, and in declaring illegal the contract which one of the board members made with the driver, the court was merely being consistent with other decisions concerning the delegation of discretionary power.²⁷ Summarily, the opinion handed down was:

Clearly, the action of the defendant board in delegating its power to contract with reference to a matter in which it was necessary to exercise a discretion, and in referring the exercise of that discretion to an individual, is without statutory authority or other legal sanction.

.

As Mr. Cates was without legal authority to bind the defendant school board, the contract which he made with the plaintiff was without legal effect and the plaintiff is not entitled to the relief sought in the premises.²⁸

Availability of funds as basis of transportation term. When a school board contracts for the transportation of pupils to a school within its jurisdiction and designates the length of the period, the contracting parties are subject thereto. The expression, "session months," as used in a contract with a bus driver in St. Helena Parish was interpreted, in view of parol evidence, to mean the general fund term.²⁹

²⁷City of Shreveport v. Herndon, (1925) 159 La. 113, 105 So. 244; The State of Louisiana v. Lewis C. Garibaldi, (1892) 44 La. Ann. 809, 11 So. 36; State ex rel. Thurmond v. City of Shreveport, (1909) 124 La. 178, 50 So. 3; Gauthier v. St. John the Baptist Parish School Board et al., (1927) 5 La. App. 570.

²⁸Johnson v. Sabine Parish School Board, (1932) (La. Crt. of App.) 140 So. 87.

²⁹Watson v. St. Helena Parish School Board, (1932) 19 La. App. 784, 141 So. 482.

Expiration of the time during which funds were available for financing the transportation was to terminate the contracts in the particular situation, for the board realized that the funds were limited and uncertain and that after the exhaustion of the provided funds there could not be operation of transfers on anticipated revenues. The court held that, although the session was of nine month's duration, transportation as a liability of the school board ceased after the expiration of two months and thirteen days, and that truck drivers were entitled to remuneration for that period, as per contract, but for no longer time. Further transportation became a responsibility of the parents.

Thus not only the discretionary power of the school board pertaining to transportation was upheld, but also the stability of its contractual power in this relation, although the term specified was rather incomparable to the length of the school session.

Legalized as a trade. The increased prevalence of the operation of transportation vehicles presents the need for determining whether the work has become a profession and to what extent the driver of such vehicle is entitled to legal protection. Judicial recognition has been given to the facts that a school transportation vehicle must be operated five days per week on a fixed schedule in the mornings and afternoons, and that the driver is personally responsible for efficient operation accordingly.³⁰ The importance of this

³⁰Hamner & Co., Limited, v. Johnson, (1931) 16 La. App. 580, 135 So. 77.

work and the rank which it has come to take were established thus in 1931:

The school bus is an important adjunct in the successful carrying on of the high schools of the state, in fact, an indispensable factor therein, and the operation of such busses now may be properly called a trade or profession on the part of those engaged therein, . . .³¹

The driver in the Hamner case was given legal protection from the sheriff's seizure and sale of the transportation truck for debts, since the truck was held to be the tool or instrument necessary for the exercise of the trade or profession by which the owner and operator earned his living.³²

Accidents of school bus drivers. Operators of transportation vehicles are responsible to the school board for the faithful performance of their duty. On the other hand, there is the question of the extent of the liability of the board for the action of such employees. In one litigation³³ the board was sued by the plaintiff to recover damages for his child's injuries, which were alleged to be the result of an accident caused by the negligence of the bus driver. As the basis for its refusal to hold the school board responsible for such accidents, the court referred to other decisions³⁴ to show that school boards are only agencies

³¹Ibid., 135 So. 78.

³²Ibid., 16 La. App. 580, 135 So. 77.

³³Horton v. Bienville Parish School Board, (1926) 4 La. App. 123.

³⁴Sherman et ux. v. Parish of Vermillion et al., (1899) 51 La. Ann. 880, 25 So. 538; Fisher Land and Improvement Co. v. Bordelon, President Police Jury, (1899) 52 La. Ann. 429, 27 So. 59.

of the state for the administration of public education in their respective parishes and, although authorized to provide for transportation, are not liable in damages for injuries caused by their officers and employees.

Another aspect of law dealing with drivers of transportation vehicles was established in a 1934 case³⁵ in which the court, having found the bus driver innocent of any negligence, refused to hold him responsible for a collision with a reckless car driver, who received personal injuries and a wrecked automobile as a result of the accident. The wrecked automobile contained an occupant besides the driver; this person also filed suit against the insurance company for damages, but since the driver of the automobile rather than the bus driver was held responsible, this claim was not allowed.³⁶

Thus, the courts have legalized the operation of school transportation vehicles as a trade. Also, it has been the legal policy to relieve the employing school board of all liability in connection with the action of transportation vehicle drivers and to assure to such drivers decisions in keeping with the evidence presented concerning accidents.

³⁵Pate v. American Employers' Ins. Co., (1934) (La. Crt. of App.) 152 So. 363.

³⁶Lewis Edwin Bounds v. American Employers' Insurance Company, (1934) (La. Crt. of App.) 152 So. 364.

School Attendance

Since the public school is established for the child and since the state has a right to compel the taxpayer to contribute of his earnings in order that the children of other parents may be given equal educational opportunities, it is reasonable to assume that the state's power would include the right to require the presence of the child at school in order that the purpose of public education may be executed.³⁷ Through statutory enactments the state has provided for compulsory school attendance and has entrusted the parish school board with its enforcement.³⁸

The governing act provides that children shall be in school not later than two weeks after the opening of the session; parents who do not comply therewith may be prosecuted for the violation.³⁹ Exemptions for certain classes of children have been provided and to the parish school board is delegated the final determination of which children may be so classified.⁴⁰ In fact, the parish board has come to be considered the legal source of initial procedures in developing the policies of compulsory school attendance.

³⁷Hermann H. Schroeder, Legal Opinion on the Public School as a State Institution (Bloomington, 1928), p. 70.

³⁸Opinions of the Attorney General of Louisiana, May 1, 1914, to May 1, 1918, p. 364.

³⁹Ibid., May 1, 1916, to May 1, 1918, p. 429.

⁴⁰Ibid., May 1, 1918, to May 1, 1920, p. 419.

Administration of Pupil Discipline

It has been the policy of the state to clothe the public school teachers with the power and authority to hold pupils accountable for disorderly conduct "in the school or on the playgrounds, or on the street or road while going to or returning from school," but there is no statutory authorization for the infliction of corporal punishment as a means of discipline.⁴¹ The legalized method of punishment seems to be restricted solely to suspension for a limited or indefinite term, this to be administered by the principal of the school, subject to the approval of the parish superintendent.⁴² With the parish superintendent rests the final power in determining what are good causes for suspension; he may appeal to the state superintendent for advice and assistance, but the latter official is not warranted in interfering on his own volition.⁴³ Where the system of incidental fees is employed, pupils who refuse to pay such fees may be suspended only if the parish board of school directors authorizes such penalty.⁴⁴

⁴¹Ibid.: May 1, 1910, to May 1, 1912, p. 404; May 1, 1928, to April 30, 1930, p. 452.

⁴²Ibid.

⁴³Ibid., May 1, 1916, to May 1, 1918, p. 425.

⁴⁴Ibid., May 1, 1914, to May 1, 1916, p. 369.

The Physical Welfare of Pupils

By Acts Nos. 150 of 1902 and 79 of 1921, the state board of health, in cooperation with the municipal and parish authorities, is empowered to provide for a health program to safeguard the physical welfare of the school children of the state.⁴⁵ It has been legally advised that no child attending the public schools may be exempt from vaccination because of religious beliefs,⁴⁶ but that pupils may not be subjected to physical examination without the consent of their parents.⁴⁷

THE PUBLIC SCHOOL CURRICULUM

The fundamental principles of curriculum organization for a dynamic society are susceptible to change according to changes in the social order. That a state has the right to prescribe the program of studies for its public schools is generally admitted.⁴⁸ However, the states have been very liberal in prescribing what shall be included in their curriculums--most of them prescribe only the "fundamental subjects which must be taught in the elementary schools"--and in delegating to the school board the power to prescribe

⁴⁵Ibid.: May 1, 1918, to May 1, 1920, p. 551; May 1, 1924, to May 1, 1926, p. 26.

⁴⁶Ibid., May 1, 1928, to April 30, 1930, p. 561.

⁴⁷Ibid., May 1, 1930, to April 30, 1932, p. 435.

⁴⁸Hermann H. Schroeder, op. cit., p. 63.

a particular course of study.⁴⁹ Court cases bearing on this subject maintain the public school's right to offer any secular subject not prohibited by the statutory laws.⁵⁰

Organic Basis

According to Louisiana's organic provisions the legal basis of a curriculum for the public school system is implied in the right to establish. This assumption may be sustained by the fact that this subject is not expressed in any of the state's constitutions prior to the War for Southern Independence. However, the first constitutional committee on public education, functioning in the Convention of 1844-1845, seemed to imply very much the theory of a public school curriculum, as may be seen by the following excerpts from its chairman's report:

"Another cause of the failure has been that large expenditures have been made for building colleges and academies for the promotion of the higher branches of literature, before providing the means for teaching the first rudiments of a common education.

"The necessary steps ought first to be taken to place within the reach of the mass of the children throughout the State, such an education as will fit them for the higher branches, and in such a manner as to place all on an equal footing in the enjoyment of the benefits to be derived from the funds of the State.

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⁴⁹Fred Engelhardt, op. cit., p. 442.

⁵⁰Otto T. Hamilton, The Courts and the Curriculum (New York, 1927), p. 24.

"Provision ought to be made by the State for . . . a fund . . . large enough if possible to afford the means to all the children in the State of obtaining a knowledge of reading, writing, and arithmetic; branches which are indispensably necessary to every citizen in his intercourse with his fellow man . . ."⁵¹

The report proper of the committee included:

The legislature shall encourage the institution of common schools throughout the State for the promotion of literature and the arts and sciences, and shall provide means for that purpose and for their support.⁵²

The first attempt of a constitutional convention to specify the regulatory principles of curriculum offerings was made in 1864 when the committee on public education recommended that "The English language only shall be taught in the common schools in this State."⁵³ Various substitutes were presented⁵⁴ and the compromise finally agreed upon became article 142 which read: "The general exercises in the common schools shall be conducted in the English language."⁵⁵ This provision, with no additions, was incorporated in the constitution by the 1867-1868 Convention.⁵⁶

⁵¹Official Report of Debates in the Louisiana Convention, 1844-45, p. 317.

⁵²Ibid., p. 319.

⁵³Official Journal of the Proceedings of the Convention for the Revision and Amendment of the Constitution of the State of Louisiana, 1864, p. 42.

⁵⁴Ibid., p. 138; Debates in the Convention for the Revision and Amendment of the Constitution of the State of Louisiana, 1864, p. 482.

⁵⁵Constitution of Louisiana, 1864, art. 142.

⁵⁶Ibid., 1868, art. 138.

In the Constitutional Convention of 1879 resolutions and committee reports were presented explaining "the necessity for extending the course of study in the public schools, beyond the mere rudiments of an elementary English Education,"⁵⁷ so as to include "reading, writing and arithmetic, with, perhaps, some knowledge of geography, grammar and history."⁵⁸ "A broad course of study in schools of every grade, from the primary to the State University" was recommended.⁵⁹ The provision for a regulated curriculum as incorporated in the adopted constitution was:

The general exercises in the public schools shall be conducted in the English language and the elementary branches taught therein; provided that these elementary branches may be also taught in the French language in those parishes in the State or localities in said parishes where the French language predominates, if no additional expense is incurred thereby.⁶⁰

The Convention of 1898 brought forward curriculum regulations⁶¹ very similar to those embodied in the previous constitution.

In the constitution adopted by the Convention of 1921 the implications pertaining to a curriculum are found in the sections which provide that all work offered in the educational institutions from the elementary school to the university shall be integrated and that "only fundamental branches of study, including instruction upon the constitutional

⁵⁷Official Journal of the Proceedings of the Constitutional Convention of the State of Louisiana, 1879, p. 168.

⁵⁸Ibid.

⁵⁹Ibid., p. 170.

⁶⁰Constitution of Louisiana, 1879, art. 226.

⁶¹Ibid., 1898, art. 251.

system of State and national government and the duties of citizenship" shall be taught in the elementary schools.⁶² This organic basis was executed through the enactment of the 1922 statute which provided that:

The branches of spelling, reading, writing, drawing, arithmetic, geography, grammar, United States history, and health, including the evil effects of alcohol and narcotics, shall be taught in every elementary school. In addition to these, such other branches shall be taught as the State Board of Education, or the provisions of the State Constitution may require.⁶³

Relative to prohibited teachings in the schools of the state system the organic provisions have reflected a consistent attitude. In the Constitutional Convention of 1864 efforts were made to prohibit the teaching of religious or sectarian doctrine of any nature in the public schools.⁶⁴ This theory was indirectly reflected in article 146 of the constitution adopted by that convention, and a similar theory has been expressed in every constitution since that time through the definite provisions that no public school funds shall be appropriated for the support of private or sectarian institutions of learning.⁶⁵

In view of the foregoing, it is evident that the organic law of Louisiana has not rendered inflexible the

⁶²Ibid., 1921, art. 12, secs. 2-3.

⁶³Acts of Louisiana, 1922, No. 100, sec. 60.

⁶⁴Official Journal of the Proceedings of the Convention for the Revision and Amendment of the Constitution of the State of Louisiana, 1864, pp. 142-143.

⁶⁵Constitutions of Louisiana: 1864, art. 146; 1868, art. 140; 1879, art. 228; 1898-1913, art. 253; 1921, art. 12, sec. 13.

organization and administration of the curricular program, which seems to be a procedure quite opposite from that in many states.⁶⁶

Reading of the Bible a Violative Procedure

The constitutions of Louisiana have assured to every person the inherent right to worship God according to the dictates of his conscience;⁶⁷ the Constitution of 1921 provides further: "nor shall any preference ever be given to, nor any discrimination made against, any church, sect or creed of religion or any form of religious faith or worship."⁶⁸ That such underlying principles have been upheld by the courts of the state in protecting the pupils of the public schools from the teachings of sectarian principles is evidenced in the Herold case of 1915.⁶⁹ In this suit the plaintiffs included two Jews and one Catholic who complained of the parish school board's action in adopting and undertaking to put into practice the following resolution:

"Whereas, it is a fact well established among us that the children in our public schools are at the most impressionable age for receiving and retaining good or evil; and

"Whereas, the lessons and truths contained within the Holy Bible are acknowledged by right-thinking people as being of paramount value in

⁶⁶Ralph Yakel, The Legal Control of the Administration of Public School Expenditures (New York, 1929), p. 20.

⁶⁷Constitutions of Louisiana: 1868, art. 12; 1879, art. 4; 1898-1913, art. 4; 1921, art. 1, sec. 4.

⁶⁸Ibid., 1921, art. 1, sec. 4.

⁶⁹Herold et al. v. Parish Board of School Directors et al., (1915) 136 La. 1034, 68 So. 116.

creating and maintaining a better moral atmosphere in every community and also in the individual life: Therefore, be it

"Resolved that the principals and teachers be requested to open daily sessions of the public schools of Caddo parish with readings from the Bible, without note or comment, and, when the leader, is willing to do so, the Lord's Prayer shall be offered."⁷⁰

It was alleged that there are too many religious philosophies and different interpretations of the Bible to permit the use of that book by the public school teachers as a part of the daily school program.

The court's analysis of the various religious dogmas and the principles of organic and statutory law which were involved included an explanation of the theory of religious freedom and of the ways in which this attacked practice of the school board might or might not be violative. After showing both legal and organic recognition of the Bible, the court expressed the theory of equal religious rights as follows:

Therefore, while we are grateful to God for religious freedom, with other blessings, we may not interfere with any citizen's natural right to also worship that same God according to the dictates of his own conscience. The Jew will be permitted without interference to worship God according to his conscience, and so will all others.⁷¹

Concerning the alleged discrimination against the Jew, it was held:

And, as he is guaranteed "the natural right to worship God, according to the dictates of his conscience," and as the resolution in question permits "lessons and truths" to be read

⁷⁰Ibid., 136 La. 1035.

⁷¹Ibid., p. 1046.

or taught from the New Testament, particularly concerning the Son of God and His resurrection from the dead, etc., it gives a preference to the children of the Christian parents, and discriminates against the children of the Jews. The resolution is therefore violative of the Constitution.⁷²

A request by the parish board of school directors is practically equivalent to a command. Relative to the compulsory character of the resolution the court said:

The general policy of the government always is to avoid with care any compulsion which infringes on the religious scruples of any, however little reason may seem to others to underlie them. Cooley, p. 585. The reading of the New Testament as the Word of God infringes on the religious scruples of the Jews. The discrimination against them, and the inequality of rights and privileges, are manifest by such requirement.

The subjection by school authorities of Jewish children to Christian worship is forbidden by the Constitution, which guarantees to every person the natural right to worship God according to the dictates of his conscience.

"Before the Constitution Jews and Gentiles are equal; by the law they must be treated alike; and the ordinance . . . which gives to one sect a privilege which it denies to another, violates both the Constitution and the law, and is therefore null and void." Shreveport v. Levy, 26 La. Ann. 671.⁷³

Judge Thomas M. Cooley's views were quoted as follows to show that the teaching of religion is not a responsibility of the schools:

"The more enlightened opinion of the present day denies the duty (to teach religion in the public schools), and affirms that any step in that direction is in greater or less degree a species of persecution of those who are not favored, and therefore incompetent, in any country whose political institutions are based upon the

⁷²Ibid., p. 1047.

⁷³Ibid., p. 1048.

principles of equality before the law. Religious instruction is, therefore, referred exclusively to the voluntary action of the people." Cooley on Taxation, 197.⁷⁴

Dismissal of certain pupils from the exercises was held to be an unsatisfactory means of correction, thus:

The answer made by defendants that "in all of said schools the said teachers might with due propriety have excused from attendance on such exercises the children of said plaintiffs and others of similar belief, if so requested by the students or their parents or guardians," is an admission of discrimination against the children of those citizens whose consciences would not permit them to worship God as taught in the particular portion of the Scriptures selected and read by the teacher of the class in which the children of said citizens happened to be.

Under such circumstances, the children would be excused from the opening exercises of the school because of their religious beliefs. And excusing such children on religious grounds, although the number excused might be very small, would be a distinct preference in favor of the religious beliefs of the majority, and would work a discrimination against those who were excused. The exclusion of a pupil under such circumstances puts him in a class by himself; it subjects him to a religious stigma; and all because of his religious belief. Equality in public education would be destroyed by such act, under a Constitution which seeks to establish equality and freedom in religious matters. The Constitution forbids that this shall be done.⁷⁵

The court's decree was that a judgment be issued:

. . . enjoining the board of school directors of the parish of Caddo and the parish superintendent from enforcing or carrying into effect the resolution of said board requesting the principals and teachers to open the morning sessions of the public schools of Caddo parish by reading from the Bible, without note or comment, and the offering of the Lord's Prayer.⁷⁶

⁷⁴Ibid., p. 1049.

⁷⁵Ibid., pp. 1049-1050.

⁷⁶Ibid., p. 1050.

Several years later the state's legal counselor continued to uphold this policy by declaring that "any attempt to teach, or comment upon, the Bible in the public schools of Louisiana would be contrary to the Constitutional provisions" which guarantee to every person religious freedom.⁷⁷

While the constitutions have contained comparatively few provisions concerning the curriculum of the schools of the state, herein is illustrated a means of curriculum control through negation--that is, school authorities have not the constitutional right to teach the Bible to the pupils through reading or in any way that can discriminate against any branches of any religion.

State's Right to Furnish Textbooks Free to All School Children

It is generally conceded that a state has the power to furnish free textbooks to pupils who attend the public schools, but it has been a mooted question as to whether a state has a right to furnish free textbooks to all children regardless of the schools attended by them.

Louisiana's earliest provisions on this subject seem to have been the organic regulation for the Parish of Orleans:

All pupils in the primary grades in the public schools throughout the Parish of Orleans, unable to provide themselves with the requisite books, an affidavit to that effect having been made by one of the parents of such pupils, or if such

⁷⁷Opinions of the Attorney General of Louisiana, May 1, 1928, to April 30, 1930, p. 130.

parents be dead, then by the tutor or other person in charge of such pupils, shall be furnished with the necessary books, free of expense, to be paid for out of the school fund of said parish; and the School Board of the Parish of Orleans is hereby directed to appropriate annually not less than two thousand dollars for the purpose named, provided such amount be needed.⁷⁸

This local privilege was recognized and upheld in 1905 by the attorney general in the ruling that the parish of Orleans should not be barred from the benefits of exchange prices for used books, as arranged by the state with the various book companies, on account of its power to furnish textbooks free to certain children.⁷⁹

In 1928 the Louisiana legislature enacted the Free Textbook Act which had for its purpose the furnishing of textbooks without cost to all children who were attending any school whatsoever. Immediately after the enactment of this law several suits attacking the legality of such measure were instituted by citizens and taxpayers,⁸⁰ citizens, taxpayers, and patrons,⁸¹ and by school boards and parish superintendents.⁸² These litigations began in the Nineteenth Judicial District

⁷⁸Constitution of Louisiana, 1898, art. 261.

⁷⁹Opinions of the Attorney General of Louisiana, May 1, 1904, to May 1, 1906, p. 199.

⁸⁰Borden et al., v. Louisiana State Board of Education et al., (1929) 168 La. 1005, 123 So. 655.

⁸¹Cochran et al. v. Louisiana State Board of Education et al., (1929) 168 La. 1030, 123 So. 664.

⁸²Bossier Parish School Board et al. v. Louisiana State Board of Education et al. Caddo Parish School Board et al. v. Same. (1929) 168 La. 1033, 123 So. 665.

Court and the final disposition of one case was a decision handed down by the Supreme Court of the United States.⁸³

From adverse decisions in the district court, the various plaintiffs appealed to the supreme court. In dealing with the first suit this court denied a motion by the defendants for a dismissal, overruled the defendants' plea that the plaintiffs--citizens and taxpayers--had no right of action, and proceeded with the case on its merits.⁸⁴

The pertinent features of the law governing this case are based on Act No. 100 of 1928 which reads as follows:

Be it enacted by the Legislature of Louisiana, That the Severance Tax Fund of the State, as levied by Act 140 of 1922, as amended, shall be devoted after allowing funds and appropriations as provided by the Constitution of the State, first, to supplying school books to the school children of the State of Louisiana, and that thereafter such further sums as remain in the said Severance Tax Fund shall be transferred to the State public school funds.

That the State Board of Education of Louisiana shall provide the said school books for school children free of cost to such children out of said tax fund, and thereafter apply the remaining sums out of the said Severance Tax Fund to the State public school funds.

That this act shall not apply to persons attending colleges and universities.⁸⁵

⁸³Emmett Cochran, W. M. Guice, Jr., Henry Steinau, et al. Appts., v. Louisiana State Board of Education et al., (1930) 281 U. S. 370, 50 S. C. 335, 74 L. Ed. 913.

⁸⁴Borden et al. v. Louisiana State Board of Education et al., (1929) 168 La. 1005, 123 So. 655.

⁸⁵Acts of Louisiana, 1928, No. 100, secs. 1-3.

Act No. 143 of 1928, the other act attacked, is the General Appropriation Act, which provides for various appropriations and specifically states that seven hundred fifty thousand dollars shall be appropriated for 1928-1929 and 1929-1930 out of the severance tax fund, to be applied for the "purchase of free school books for the use of school children of this State, to be expended by the State Board of Education of Louisiana as provided by House Bill No. 90 of 1928, or so much thereof, as may be necessary."⁸⁶

The plaintiffs alleged that these measures were unconstitutional on various grounds and emphasized that:

. . . the expenditure of the severance tax for such illegal purposes is the taking of their property for private purposes, without due process of law, in contravention of section 2 of article 1 of the Constitution of this state, and of the Fourteenth Amendment of the Constitution of the United States, and is an act contrary to the republican form of government, guaranteed to each state by section 4 of article 4 of the Constitution of the United States.⁸⁷

In handing down the opinion on the unconstitutionality charge, Justice Winston Overton said:

Act No. 100 is not, and does not purport to be, an appropriation act. It does not authorize the drawing of anything from the treasury. It merely dedicates a part of the severance tax fund, without even specifying the amount to the purchase of school books. Standing alone the act could have no practical effect, save as a basis for specific appropriations. That such an act is not an appropriation act, but merely an act of dedication, see *Fisher v. Steele*, Auditor, 39 La. Ann. 447, 1 So. 882; *Board of Administrators v. Richhart*, 139

⁸⁶Ibid., No. 143, sec. 1.

⁸⁷*Borden et al. v. Louisiana State Board of Education et al.*, (1929) 168 La. 1015.

La. 446, 71 So. 735; *Lionel's Cigar Store v. McFarland*, Supervisor, 162 La. 956, 111 So. 341. Since the act is not an appropriation act, it was unnecessary that the Legislature, in passing it, comply with the constitutional provisions relative to the making of appropriations, by making them for specific purposes and specific amounts and for a period not exceeding two years.⁸⁸

The attack that the title of Act No. 143 did not indicate the intention of the act to make appropriations for the purchase of school books was met by the decision:

The title of the act is similar to the titles usually used in General Appropriation Acts in this state, and in fact follows the constitutional requirements as to what may be contained in such acts. We think that the title suffices to cause one to anticipate that, upon investigation, some appropriations may be found in the body of the act. We therefore conclude that the title is sufficient.⁸⁹

In upholding the discretionary right of the legislature to include the appropriation for the purchase of school books in the General Appropriation Act the court reasoned:

The Legislature evidently considered that the appropriations for the purchase of school books were sufficiently connected with the ordinary expenses of government to justify their inclusion in the General Appropriation Act. The purpose had in view, in making the appropriations--that of reducing, and if possible of obliterating, illiteracy in this state--was a purpose in which the state was vitally interested, and the necessity for the continuance of the appropriations to accomplish that end was such as to give reasonable grounds to consider the matter an ordinary obligation and expense of government. We are not prepared to say that the Legislature erred in so treating the matter.⁹⁰

⁸⁸Ibid., p. 1017.

⁸⁹Ibid., p. 1018.

⁹⁰Ibid., p. 1019.

It was charged that the two acts are violative of certain sections of the Constitution of 1921--section 4 of article 1, sections 8 and 12 of article 4, and section 13 of article 12. To this the court answered:

In our opinion, which is the view of the majority of the court, these acts violate none of the foregoing constitutional provisions. One may scan the acts in vain to ascertain where any money is appropriated for the purchase of school books for the use of any church, private, sectarian, or even public school. The appropriations were made for the specific purpose of purchasing school books for the use of the school children of the state, free of cost to them. It was for their benefit and the resulting benefit to the state that the appropriations were made. True, these children attend some school, public or private, the latter, sectarian or nonsectarian, and that the books are to be furnished them for their use, free of cost, whichever they attend. The schools, however, are not the beneficiaries of these appropriations. They obtain nothing from them, nor are they relieved of a single obligation, because of them. The school children and the state alone are the beneficiaries. It is also true that the sectarian schools, which some of the children attend, instruct their pupils in religion, and books are used for that purpose, but one may search diligently the acts, though without result, in an effort to find anything to the effect that it is the purpose of the state to furnish religious books for the use of such children. In fact, in view of the prohibitions in the Constitution against the state's doing anything of that description, it would be legally impossible to interpret the statute as calling for any such action on the part of the state, for where a statute is susceptible of two constructions, one of which makes it unconstitutional and the other constitutional, the interpretation making it constitutional must be adopted. What the statutes contemplate is that the same books that are furnished children attending public schools shall be furnished children attending private schools. This is the only practical way of interpreting and executing the statutes, and this is what the state board of education is doing. Among these books, naturally, none is to be expected, adapted to religious instruction.

As relates to the contention that the statutes violate section 12 of article 4 of the Constitution, we do not find this contention well founded. The school books are not granted or donated

to the children. . . . It is only the use of the books that is granted to the children, or, in other words, the books are lent to them, which implies that they are to be returned. . . . Where the granting or lending of anything of value, belonging to the state, or any political corporation thereof, is necessary in the reasonable exercise of the police power, section 12 of article 4 of the Constitution was not intended to prevent the granting or lending. . . . The furnishing of school books to the children of the state, for their use, in attending school, tends directly to promote the education of the children of the state and to obliterate illiteracy, thereby improving the morals of the children and promoting the general welfare and safety of the people, and hence comes within the police power. Cf. *Barbier v. Connolly*, 113 U. S. 27, 5 S. Ct. 357, 28 L. Ed. 923. Our conclusion is that the foregoing pleas, directed against both acts, should be overruled.⁹¹

In answer to the allegation that the state board of education was not empowered under the constitution to distribute the general school funds according to the educable children of the various parishes of the state, which in principle was provided in the Free Textbook Act, it was explained that the money used to purchase said textbooks was appropriated from the severance taxes which were not considered a part of the public school fund. It was further contended that the measure violates the "due process clauses of the Constitutions of this state and of the United States, and also section 4 of article 4 of the Constitution of the United States."⁹² In answer to these charges the court said:

The contention, as to the violation of the due process clauses, is based on the ground that taxes may neither be levied nor expended for any but a public purpose, and that to do either for any but

⁹¹Ibid., pp. 1020-1022.

⁹²Ibid., p. 1022.

such a purpose amounts to a taking of property without due process of law. It suffices to say that we do not understand that plaintiffs question the legality of the levy, but they do question the legality of the proposed expenditure. We have found, however, that the taxes, here appropriated, are to be spent legally for a public purpose, and this, we think, disposes of the question here presented. As to the violation of section 4 of article 4 of the Constitution of the United States, it is certainly difficult, and we think impossible, to see how the expenditure of public funds for textbooks for the use of the children of the state has any tendency to destroy the republican form of government, enjoyed by the state. However, the question here presented is a political one, which does not fall within the jurisdiction of the courts. *Pacific States Telephone & Telegraph Co. v. Oregon*, 223 U. S. 118, 32 S. Ct. 224, 56 L. Ed. 377; *South Dakota ex rel. Wagner v. Summers*, 33 S. D. 40, 144 N. W. 730, 50 L. R. A. (N. S.) 206, Ann. Cas. 1916B, 860.⁹³

Summarily, the supreme court of the state defended the statute in every significant point raised by the plaintiffs and held that the state under the law has a right to furnish free textbooks to all children for their use while in school regardless of the school attended.

Companion cases on this subject resulted in very similar decisions. Of one case the court said:

The issues presented in this case are the same, in all essential respects, as those this day decided in the case of *Silas P. Borden et al.* (No. 29,569 of the docket of this court), ante, p. 1005, 123 So. 655; the only difference between the two cases being that plaintiffs, besides suing as citizens and taxpayers, are also suing as patrons of the public schools.

For the reasons given in the case of *Silas P. Borden et al. v. Louisiana State Board of Education*, the judgment of the trial court,⁹⁴ refusing to issue the injunction, is affirmed.

⁹³Ibid., p. 1023.

⁹⁴*Cochran et al. v. Louisiana State Board of Education et al.*, (1929) 168 La. 1032.

In another case which dealt with consolidated suits instituted by school boards and parish superintendents the court failed to recognize cause of action of the plaintiffs, as is shown by Justice Overton's decree:

As we held in the Borden Case, Act No. 100 of 1928 is merely an act that dedicates funds, and is not an appropriation act. Of and by itself it has no practical value, save, perhaps, to serve as a basis for future appropriations. If Act No. 143 of 1928, or, for that matter, if Act No. 100 of 1928, were declared unconstitutional, or if both of them were so declared, in so far as they relate to the purchase of text-books for the use of the children of the state, plaintiffs would gain nothing by the decree. The declaring of these acts unconstitutional, to the extent mentioned, would leave the \$750,000 in the treasury, subject to appropriation by the Legislature, and would not, as urged by plaintiffs, cause this sum, or any part of it, to pass to the public school fund, subject to distribution among the parishes.

We therefore think that plaintiffs disclose no right or cause of action. They have no interest to sustain these suits, and were properly dismissed.⁹⁵

One of the companion cases on the textbook question⁹⁶ was appealed to the Supreme Court of the United States for further adjudication.⁹⁷ In upholding the decisions of the supreme court of Louisiana, Chief Justice Charles E. Hughes of the Federal Supreme Court said:

⁹⁵Bossier Parish School Board et al. v. Louisiana State Board of Education et al. Caddo Parish School Board et al. v. Same. (1929) 168 La. 1035.

⁹⁶Cochran et al. v. Louisiana State Board of Education et al., (1929) 168 La. 1030, 123 So. 664.

⁹⁷Emmett Cochran, W. M. Guice, Jr., Henry Steinau, et al., Appts., v. Louisiana State Board of Education et al., (1930) 281 U. S. 370, 50 S. C. 335, 74 L. Ed. 913.

No substantial Federal question is presented under Sec. 4 of article 4 of the Federal Constitution guaranteeing to every state a republican form of government, as questions arising under this provision are political, not judicial, in character. *Ohio ex rel. Bryant v. Akron Metropolitan Park Dist.* decided March 12, 1930 (281 U. S. 74, ante, 710, 66 A. L. R. 1460, 50 Sup. Ct. Rep. 228), and cases there cited.⁹⁸

In reply to the complaint that the acts in question would aid private and other schools not in the public educational system by furnishing textbooks free to the children attending those schools, the United States Court quoted from an interpretation of this legislation rendered by the supreme court of Louisiana and concluded:

Viewing the statute as having the effect thus attributed to it, we can not doubt that the taxing power of the state is exerted for a public purpose. The legislation does not segregate private schools or their pupils, as its beneficiaries, or attempt to interfere with any matters of exclusively private concern. Its interest is education, broadly; its method, comprehensive. Individual interests are aided only as the common interest is safeguarded.⁹⁹

Thus, it may be seen that the Free Textbook Act withstood all attacks made upon it, regardless of the personnel of the plaintiffs, or the jurisdiction of the courts in which it was tested. Hereby every school child of Louisiana is definitely granted the right to receive from the state free use of textbooks.

⁹⁸Ibid., 281 U. S. 374.

⁹⁹Ibid., p. 375.

SUMMARY

Pupil Personnel

The supervision of the pupil personnel is one of the essential functions of the directors of a public school system. Pertinent policies revealed by the state's organic provisions and judicial interpretations are mainly the following:

1. The administration of the pupil personnel is implied in the power of the state to establish public schools.

2. To legislative enactment and the ministerial officers of education have been left largely the provisions for supervision of the school pupil. No organic bases for this function were recognized until the Convention of 1852 and then only by implication.

3. The establishment of public schools for all the children of the state without race or color distinction was provided for in the Reconstruction constitutions.

4. Since 1879 separate schools for the white and colored races have been established in theory and practice.

5. Ordinarily pupils attend the schools of their parish, but those pupils not within reach of a suitable school therein may, through mutual consent of the two parish superintendents involved, attend school in an adjoining parish.

6. Parish school boards may administer the problem of transportation according to their discretion but may not delegate that power to other officials.

7. The business of transporting pupils is recognized as a trade or profession and the school board is in no way liable for damages in accidents of its bus drivers.

8. Children in Louisiana shall attend the schools provided for them. To the parish board is entrusted the enforcement of statutory law to this effect.

9. Pupils must render account for conduct considered disorderly or indiscreet by the teachers in charge, and with the parish superintendent is vested the final jurisdiction in applying punishment, of which the only drastic method approved is suspension.

10. A state health program operates to safeguard the physical welfare of pupils; its provisions in some respects are mandatory, while in others they are directory.

The Curriculum

The administration of its curriculum is one of the implied functions of the state's public school system. That Louisiana's populace has believed in the theory of a dynamic course of study is evidenced by the fact that the state curriculum has had its development without very much legal basis except such powers as were delegated to the educational agents of the state. Leading facts and outstanding policies in the development of the state's public school curriculum are:

1. The theory of a curriculum was present in the Constitutional Convention of 1844-1845; however, there was no expression on it in any of the state's constitutions prior to the War for Southern Independence.

2. From the time of the Constitutional Convention of 1864 efforts have been made to give organic sanction to the bases of a curriculum. However, the various constitutions in their final form have included only a recognition of the essentiality of instruction in the English language and of an integrated course of study from the elementary school to the university, to be developed by the educational officers at their discretion with but a few fundamental subjects specified as required.

3. To assure absolute religious freedom to the pupils of the public schools no teacher or school official is permitted to teach the Bible through reading, or to use it in any way in the exercises of the school.

4. The state grants the free use of textbooks to all school children regardless of the school attended by them. Louisiana is a pioneer in this particular phase of educational development and her action has been completely upheld by the judicial system of both the state and the United States.

CHAPTER XI

CONCLUSIONS

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The United States of America is established on the theory that a federated democracy can best serve its constituency by providing for three separate and distinct branches--law-making, explaining, and enforcing. The three branches not only have functions peculiar to their particular divisions but also each branch tends to circumscribe the power of the other in the development of governmental policies. Louisiana, in accord with the other states of the Union, has established a state government based on the fundamental principles of the Federal Government.

The American system of free public schools as a function of the state reflects the underlying principles of this form of federated democracy. That Louisiana recognized her educational responsibilities is evidenced by her legal foundations for a program of public education prior to her admission to the Union.

The controversial issues arising from the organization and administration of Louisiana's system of free public schools have been an influential factor in the development of the educational policies of the state. Many of those issues, having been carried to some phase of the judiciary for legal interpretation, have occasioned the determining of the law of

the public school system. That judicial interpretations based on organic and statutory laws, as well as on established custom, have been contributory to the development of educational policies is indicated by the facts that the courts have rendered approximately two hundred fifty decisions including interpretations on almost every underlying principle of the educational law of the state and that the attorneys general have supplemented those interpretations with approximately nine hundred fifty opinions.

In the present chapter of this study no attempt is made to summarize all the educational principles and policies established by judicial interpretations, for that information may be found in the various chapter summaries. However, as circumscribed by the limitations of the problem, the fundamentals of educational law which it is found to have been established seem to justify the following conclusions concerning the policies of Louisiana's public school system:

1. As a result of the transplanting of educational theories from France and Spain, the schools of the colonial period were primarily a product of the Catholic Church. Also, there were some reflections of an increasing interest in the development of a program of public education under the auspices of regal orders.

2. Toward the close of the territorial period the legislative assembly, under the leadership of Governor William C. C. Claiborne, laid statutory foundations for the theory of a public school system as a function of the government.

3. The Ordinance of 1787 and the Federal Constitution, reflecting the laissez-faire attitude of its framers toward the subject, recognized the responsibility of public education to be one of the undelegated powers reserved by the states. That Louisiana was cognizant of this right is shown by her various provisions for a system of public education many years before the organic laws of the state made any action thereupon mandatory.

4. The constitutions of the state, except the first, reflect a growing interest in broadening the scope for a comprehensive system of free public schools. Provisions for educating the children of color was a controversial issue during the period of Reconstruction, but since the Constitution of 1879 it has been the policy of the state to provide educational facilities for all children of school age in separate schools for the white and colored races.

5. It is maintained judicially and legally that the state has the right and duty to establish and support a system of free public schools for the purpose of disseminating knowledge and promoting the general intelligence of the citizenry. Legal recognition has been given to the authority of the state for extending the system upward to include the secondary school and junior college and downward to include the kindergarten.

6. Louisiana accepted the Federal Government's grant of the sixteenth sections of land to develop a permanent source of revenue for the support of public education. It has been the policy of the state, as the legally recognized trustee thereof, to preserve the school lands through strict adminis-

tration and to use the funds derived in various ways therefrom only for the support of the public schools of the township wherein the particular section is located.

7. The free school fund accumulated as a result of the administrative policies pertaining to the sixteenth section lands. The state accepted this fund as a trust and proposed to distribute its accrued interest proportionately to the schools of the townships concerned. The legislature in 1872 attempted to abolish the state's responsibility for the entrusted debt, but its action was overruled by the supreme court decision which maintained the perpetuity of the fund.

8. That the responsibility of maintaining a system of free public schools was readily accepted by the state is evidenced by the legislature's appropriation of approximately one and three-fourths million dollars for this purpose before the constitution made such support mandatory.

9. A state-wide property tax has supplied one of the chief sources of the general school fund since 1847. Also, the administration of a general property tax for schools has been delegated to local authorities. For many years the police juries were authorized to levy such tax in their respective parishes; in 1888 the authorization was made mandatory, but since 1908 this tax must be included in the regular budget to be valid.

10. It has been a policy of the state to supplement the general school fund by the revenue from various minor sources.

11. The state has adhered to the policy of holding parish school treasurers strictly responsible as custodians of the general school fund and for the disbursement thereof according to orders from their respective school boards as prescribed by law.

12. A cash basis system of defraying expenses is practiced, and only in the exceptional case has the current educational expenditure been permitted to exceed anticipated revenues for the fiscal year. However, the liquidation of school indebtedness by means of funding it into interest-bearing certificates has been legalized.

13. Special tax levies authorized by the qualified voters of a particular school district, considered as a separate and distinct entity, have been legally recognized for approximately a century as a source of public school support. That the people of Louisiana have made use of this autonomous privilege is indicated by the fact that more than six million dollars of educational revenue was collected through this process in the fiscal school year, 1930-1931.

14. It has been the policy of the state to adhere strictly to the organic provisions and controlling statutes in levying and collecting the special school tax.

15. The calling of a tax levy election is discretionary with the parish school board, except when it is legally petitioned by the qualified voters of the district concerned.

16. A valid tax levy election must comply with the governing statute and, if carried, must receive a majority of

both the votes and the property valuation by correct count.

17. The courts have been called upon to adjudicate so many contested tax levy elections that they have advised not only that the laws be clarified but also that policies be adopted by the administrators to prevent the many types of irregularities which have culminated in litigations.

18. The judiciary has maintained definitely that all special school funds shall be disposed of as prescribed by the qualified voters of the district.

19. The bond issue as a method of raising revenue for the construction of school buildings and teachers' homes and the purchase of necessary grounds and equipment therefor is one of the recent educational developments.

20. Since a bond issue is liquidated through deferred payments derived from funds predicated on the levying of a special tax by the qualified voters of the district, the policy of adhering to special tax regulations for school maintenance purposes is applied--that is, the proposed bond issue is required to have a specific purpose and to comply with all organic and statutory law governing the bond issuing process at the time of issue. If the special basis tax for the bond issue has already been voted, the funds may be made more quickly available through the issuance of certificates of indebtedness.

21. As a means of protection to all who may be concerned with special tax levies and bond issues the rights of prescription are legally recognized and employed.

22. The legislature is the chief nonprofessional agency through which provisions for the control of a free public school

system have been made.

23. Powers delegated to the police juries during the formative period made them one of the controlling agencies of public education.

24. Since the beginning of Louisiana's public school system the powers entrusted to various boards of education have influenced the development of the state's educational policies.

25. That Louisiana was reluctant to adopt the policy of centralized educational control through nonprofessional agencies is indicated by the late development of the state board of education, which had primarily a personnel ex officio with limited powers until the present century. However, the Constitution of 1921 clothed this board with broad discretionary powers of control and supervision of the free public school system of the state.

26. The parish school board, which had its beginning in 1821, has been a potent factor in the development of educational policies. From the time of the present century this agency has been granted extensive discretionary powers pertaining to the educational affairs of the parish. For example, it governs all special school tax elections, selects the parish superintendent of education, affirms the nominations of all teachers and fixes their salaries, creates and abolishes school districts, and cooperates with the state board of education in the development and execution of the school policies of the state.

27. The local school board was one of the principal controlling factors during the formative period of public education, but by the close of the last century its influence was being replaced by the increasing power of the parish school board.

28. The state superintendency as a means of centralized professional control of public education had its inception through the secretary of state's office in 1833, but in 1845 it was legally established by the constitution as a separate and distinct agency of control. Louisiana's hesitant acceptance of the centralization of educational power is evidenced by the efforts which were made to abolish the office of state superintendent or to circumscribe the duties pertaining thereto until the latter part of the last century. Since that time the powers and responsibilities of this officer have been expanded to include general control and supervision of the entire free public school system.

29. The divisional superintendent--a product of Reconstruction--was eliminated from the educational program with the passing of that period.

30. The office of parish superintendent was temporarily established as an agency of control in 1847. The slow development of professionalized supervision of public education is indicated by the abolishment of this office or the delimitation of its sphere of activities until near the close of the nineteenth century. From the beginning of the present century, however, the powers of the parish superintendent have been

extended. Since this officer is a creature of the parish school board, there is wholesome cooperation between him and the school board in the execution of the policies of public education within the parish.

31. It has been the legal policy to consider school board members and superintendents as officers of the state, but due to the organic change in residence requirements in 1921 the parish superintendent is not now thus classified.

32. The public school teacher of Louisiana is the chief agent through which the educational policies are finally applied.

33. Certification of the eligibility of teachers by some delegated authority was one of the state's earliest educational policies.

34. Teachers are employed by the parish superintendent with the approval of the parish school board.

35. The teacher's contract is very significant to both the employer and the employee and only in the exceptional case is it subject to cancellation without the fulfillment of all financial obligations therein.

36. Various holders of certificates of indebtedness which were issued to teachers in the New Orleans school system during the latter part of the nineteenth century have found it necessary to carry their efforts at liquidation to the district, state, and sometimes the Federal courts.

37. The school district is legally recognized as a quasi-corporate subdivision of the state, created by law at

the discretion of the parish school board, for the purpose of carrying out the state's policies in establishing and maintaining public schools within its jurisdiction.

38. In financing a building program the parish school board is required by statute to assume corporate responsibilities. The contract is an integral feature of this program and the courts have maintained strict adherence to the law for all parties concerned therewith.

39. To the parish school board is entrusted the supervision of public school property, but it is the policy of the state to safeguard the use of this property and to exempt it from ordinary taxation.

40. The administration of pupil personnel is implied in the right to establish and maintain public schools for the welfare of the youth of the state.

41. Only in exceptional cases are pupils permitted to attend schools other than in their respective districts.

42. Compulsory school attendance and transportation of pupils are recent developments in educational law, and the parish school board is held responsible for the execution thereof.

43. Pupils are subject to discipline and may be suspended from school for disorderly conduct, but corporal punishment is prohibited by the law.

44. The curriculum is one of the implied essentials of the public school system. The state's policy has been to prescribe the fundamentals and leave the development of the curriculum proper to the ministerial officers of education.

45. In accord with Louisiana's policy of assuring religious freedom to all within its jurisdiction, the teaching or reading of the Bible in connection with public school work is definitely prohibited.

46. Recently the state adopted the policy of granting to every school child the right to receive from it the free use of textbooks.

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BIOGRAPHY

Martin Luther Riley was born at Etta, Union County, Mississippi, December 17, 1892. He received his early training in the Salem public school and was then principal of the Adam and Salem schools for five years. After military service in the World War he was elected to the Mississippi Legislature from Union County for the terms, 1920-1924 and 1924-1928.

In 1920 he entered State Teachers College, Hattiesburg, Mississippi, where he received the B. S. degree in 1924. During the next three years he served as superintendent of the public school at Blue Springs, Mississippi. In 1927 he matriculated in George Peabody College for Teachers to do graduate work in the fields of Education, History, and Economics. From that institution he was graduated with the M. A. degree in 1929. During the period, 1928-1932, he was Associate Professor of History at State Teachers College, Hattiesburg, Mississippi.

In 1932 he entered the Louisiana State University as Graduate Assistant in the Department of Education of Teachers College, in which capacity, and as a teacher in various extension centers, he has since served while pursuing his graduate program leading to the degree of Doctor of Philosophy in Education and American History.

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